

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated April 7, 2022, in which the ministry decided that the appellant had received an overpayment of disability assistance benefits for which they were not eligible, in the amount of \$3,818.19. The ministry determined that the appellant had failed to report earned income in 2018 and 2019, resulting in an overpayment which they must now repay to the ministry.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), sections 11, 18 and 22
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), sections 1, 9, 24 and 29; Schedule A sections 1, 2 and 4; Schedule B sections 1, 2, 3 and 4

Part E – Summary of Facts

The appellant died after the Request for Reconsideration was delivered but before the ministry made the reconsideration decision. The ministry agreed that the appellant's spouse could continue the appeal on behalf of the appellant's estate.

A videoconference hearing began on April 27, 2022 and was adjourned at the request of the appellant's spouse because she was not able to participate in the hearing so soon after the appellant's passing.

The rescheduled hearing took place on May 26, 2022. The appellant's spouse appeared as representative of the appellant's estate.

Evidence Before the Ministry at the Reconsideration:

The appellant was in receipt of disability assistance under the EAPWDA from May 2, 2005 to November 2021. From November 2021 on, the appellant received Medical Services Only benefits. The appellant's family unit was made up of himself and his spouse, who was not a person with disabilities.

The appellant and his spouse were self-employed since 2018. They did not report any income from that employment in their monthly reports to the ministry.

On April 1, 2020, the appellant contacted the ministry about another matter and during that conversation, told the ministry that they were self-employed but were unable to work because of social distancing due to Covid 19. The ministry then reviewed their file and determined that they had not reported any earned income from January 2018 to December 2020.

The appellant provided detailed financial information for their business, including bank statements for their business account and itemized monthly lists of income, business expenses and deductions for the years in question. The appellant calculated that their annual net income, after deductions for business expenses and income tax at 20%, was \$5,262.11 in 2018 and \$2,518.30 in 2019.

The appellant also provided Notices of Assessment from Canada Revenue Agency ("CRA") showing total, net, and taxable income in 2018 and 2019, although the Notices of Assessment did not show the source of the income or the details of the deductions from income. In 2018 the appellant's income, before any expenses or deductions, was \$18,882, and in 2019 it was \$17,915. For the appellant's spouse, total income for 2018 was \$250, and for 2019, a loss of \$1,770. The Notices of Assessment show no tax payable by either the appellant or his spouse in 2018 or 2019.

The maximum Annual Earnings Exemption ("AEE") for a family unit with of 2 people, one of whom was a person with disabilities, was \$14,400 per year in 2018 and 2019. In 2020, the AEE was increased to \$18,000. The ministry determined that the appellant was ineligible for disability assistance for November and December 2018 and January 2019 because the appellant's earned income was more than the AEE of \$14,400 for 2018. For 2019, the ministry determined

that the appellant's income was more than the AEE limit, which reduced the amount of disability assistance for which he was eligible in December 2019 and made him ineligible for disability assistance in January and February 2020. The ministry calculated the overpayment of benefits to be \$3,818.19, which was the difference between the amount of disability assistance the ministry paid to the appellant, and the amount the ministry would have paid if the appellant had reported the total income received. The ministry's calculation of earned income did not include any deductions for business expenses.

Since 2012 the ministry has administered a Self-Employment Program ("SEP") for recipients of disability assistance who are, or wish to become, self-employed. If a recipient is participating in a SEP, they are allowed to deduct permitted operating expenses from gross self-employment income, and only the net income is included in the AEE calculation. The appellant and his spouse were not participating in a SEP in 2018 or 2019.

In the Request for Reconsideration, the appellant stated that in the years 2018, 2019 and 2020 he did not know there was a way to report net self-employment income for a person with disabilities. The appellant stated that, because of his disabilities, he was unable to earn income other than through self-employment. In addition, during that time he was in hospital 3 times for surgeries and rehabilitation, and the appellant's spouse was in hospital twice, which resulted in loss of income. Further, while their records would show a high income in the months before a hospitalization, they would have a loss in subsequent months when they had to refund advance payments because they could not provide services as promised.

In a letter to the ministry dated February 4, 2022, the appellant and his spouse disputed that there had been an overpayment, pointing out that the ministry had failed to tell the appellant about the SEP. The appellant provided documents showing that the SEP had existed since 2012, and alleged that the ministry had "*neglected and not allowed*" the appellant to report through the SEP. The appellant provided revised AEE forms to show that income net of expenses for 2018, 2019 and 2020 was below the annual earnings exemption amount. They indicated that they would also send copies of the letter and supporting documents to "*the Ombudsmen*" [sic].

In a letter "To Whom it May Concern," dated March 15, 2022, the appellant stated that he thought that CRA would share with the ministry the income information from his income tax return each year, just as CRA shares the information with Pharmacare. He did not find out about the SEP until May 2020. He and his spouse did not get any help from their local ministry office to apply for the SEP in 2020, and finally applied themselves in December 2020. They were accepted into the SEP in February 2021.

Evidence at the Hearing:

Appellant:

At the hearing, the appellant's spouse stated that they were not comfortable reporting self-employed income at their local ministry office because their experience was that they would have to wait in line for hours, and then staff would not be able to answer their questions. They had contacted the ministry in April 2020 because they had to move to a different unit, with a

higher rent, in the building where they lived. The ministry asked how they were managing to afford the extra expense, and they told the ministry about their self-employment income. Even though the SEP had existed since 2012, no one at the ministry had told them about the program. Then, after May 2020, the ministry staff refused to allow them to be in the SEP.

Until May 2020, they reported each month that they were looking for work, rather than report that they were self-employed, because they were always looking for new clients for their business. Their income each month, after business expenses, was either zero, or very little, or even a loss. They also had no confidence in the ministry to understand that they were self-employed, and they did not trust the ministry to treat them fairly. Therefore, in their monthly report to the ministry, they reported their income as 'zero'.

In answer to a question from the panel, the appellant's spouse said that, where business bank statements in 2018 and 2019 show an entry for "partner paid out deposits" and "online transfer out – salary", that was a payment of income to the appellant or his spouse.

Ministry:

The ministry stated that the appellant and his spouse had reported other income from housecleaning and possibly Canada Pension Plan income (though the ministry was not certain about CPP income) several times in monthly reports to the ministry in the past.

When a recipient of disability assistance is enrolled in a SEP, they meet with the ministry for an interview and, if approved, they engage in a planning process that supports their business.

In answer to a question from the panel, the ministry stated that, if the appellant had been approved for the SEP in 2018 and 2019, their income would not have resulted in an overpayment of disability assistance because of allowable business deductions.

Appellant's Reply:

In response to the additional evidence from the ministry about past income reporting, the appellant stated that she had tried to supplement their income with house cleaning work in the past. She believed that was before 2012 and before she and the appellant started their business. The ministry demanded to see her cheque stubs for that income, and she had to make up a sheet with details of her clients, which she did not like to disclose. The experience convinced her that the ministry would not understand how to deal with self-employment income and contributed to their decision not to report the self-employment income from the business.

Additional Evidence:

Neither party objected to any of the additional oral evidence provided by the other party at the hearing.

The panel finds the additional evidence to be admissible under section 22(4) of the Employment and Assistance Act. It provides additional information about the appellant's income, the monthly reporting to the ministry and their reasons for not reporting self-employment income. It also

provides additional information about the SEP and deduction of business expenses. Therefore, the panel finds that the evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue to be decided is whether the ministry was reasonable in its decision that the appellant had received an overpayment of disability assistance benefits for which they were not eligible, in the amount of \$3,818.19. The ministry determined that the appellant had failed to report earned income in 2018 and 2019, resulting in an overpayment which they must now repay to the ministry.

Legislation:

Under EAPWDR section 24, disability assistance is calculated as the amount determined under Schedule A for a particular family unit, minus the family's net income determined under Schedule B. If the family's net income is equal to or more than the amount in Schedule A, then under EAPWDR section 9(2) the family is not eligible for disability assistance.

Under EAPWDA section 11, a recipient of disability assistance must submit a report to the ministry every month, that includes any change in circumstances, or information that may affect their eligibility. Under EAPWDR section 29, the report must be submitted by the 5th of the month and must include all income received and the source of the income.

EAPWDR section 1 defines "earned income" which includes "any money or value received in exchange for work or the provision of a service."

EAPWDR Schedule B sets out how net income is calculated. Under section 1(c), all "earned income" must be included, except deductions permitted under section 2, or exempt income under sections 3 and 4. There is an annual exemption from earned income allowed under section 3. The amount depends on the make up of the family unit – for 2 people, one of whom is a person with disabilities, the annual exemption in 2018 and 2019 was \$14,400. The exemption increased to \$18,000 in 2021.

Under EAPWDR Schedule B section 4, earned income of a recipient of disability assistance is exempt from calculation of the total income of the family unit if:

1. the recipient is participating in a self-employment program;
2. the earned income comes from operating a small business under that self-employment program and
 - a. is used for permitted operating expenses of the small business, or
 - b. is kept in a separate business account used only for paying permitted operating expenses, with a balance of no more than \$5,000, or
 - c. is used for renovations to the recipient's residence, under conditions and within the limits set out in the legislation.

EAPWDR Schedule B section 4(1) defines "permitted operating expenses" as "costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating" and lists the expenses that are allowed as deductions under the legislation.

Under EAPWDA section 18, if the ministry provides disability assistance to a family unit that is not eligible for it, recipients who are members of the family unit during the period when the overpayment is provided are liable to repay to the government the amount of the overpayment.

Appellant's Position:

Failure to Report Income:

The appellant maintains that they did not know that the ministry had any process in place to help a recipient with Person with Disabilities ("PWD") designation accurately report self-employment income. For example, the appellant points out that, looking at gross income amounts, it might appear that they had earned a large amount in one month, because their clients pre-pay for a series of services. However, due to health issues, sometimes the appellant would have to refund that money, resulting in losses in the months following.

They also assumed that CRA shared income information with the ministry, just as it does with Pharmacare. Therefore, the appellant says that they did not make false or misleading statements to the ministry intentionally and should not be penalized as a result. The appellant refers to EAPWDA section 22, which sets out the offence of supplying false or misleading information required under the Act, in support of this argument.

Calculation of Net Income:

The appellant argues that "net income" under the EAPWDR should be calculated in the same way as net income declared to CRA, so that the appellant would be able to deduct permitted operating expenses for his small business. The appellant points out that they could not operate their business without incurring expenses such as a business licence, insurance and a separate office space in their home, so it is only reasonable to allow those deductions. When business expenses are deducted from gross income in 2018 and 2019, the annual income of the appellant and his spouse is below the AEE and there would be no overpayment of disability benefits.

The appellant acknowledges that they were not enrolled in a SEP with the ministry. However, the appellant says that their income from self-employment should be calculated as if they were in the SEP, net after deducting business operating expenses, because the ministry did not tell the appellant about the SEP until May 2020, even though the SEP has existed since 2012. The appellant did not find out until May 2020 that it was possible to enroll in the SEP with an existing business.

Change in Policy/Repeal of Legislation:

The appellant also maintains that, after receiving the appellant's February 4, 2022 letter, the ministry deliberately changed policy and regulations to defeat the appellant's arguments. In particular, the appellant says that the ministry changed policy and legislation so that SEP participation was not allowed retroactively for people who did not know about it. The appellant also says that the ministry increased the annual exemption amount to \$18,000 in 2020 so that

there would be no overpayment to the appellant in that year. The appellant maintains that the ministry is being cruel and unfair in pursuing them over the alleged overpayment.

Underpayment of Disability Assistance:

The appellant says that, far from being overpaid, they were underpaid, because their net income was less than the maximum AEE in 2018 and 2019. The appellant says that they are owed the difference between their AEE net of expenses and the maximum AEE.

Ministry's Position:

The ministry has calculated an overpayment of disability assistance in the amount of \$3,818.19 due to the appellant's self-employment income that he did not report to the ministry. The ministry maintains that it has calculated that overpayment in accordance with the EAPWDA and the EAPWDR.

Failure to Report Income:

The ministry maintains that, under EAPWDA section 11 and EAPWCR section 29, the appellant was responsible to report to the ministry any change in circumstances or employment in a timely manner, and to report all income they received each month. The appellant did not tell the ministry that he or his spouse were self-employed, and the appellant reported no income in 2018 or 2019. The appellant's reasons do not relieve them from the results of their failure to report self-employment income.

Calculation of Net Income:

The ministry says that the appellant's self-employment income was "earned income" under EAPWDR section 1. If a person is not enrolled in a SEP, the only permitted deductions from earned income are set out in EAPWDR Schedule B section 2, for payroll deductions such as income tax and employment insurance. Under the EAPWDA and the EAPWDR the ministry is not permitted to backdate enrollment in the SEP, or to calculate net income other than as set out in the legislation.

The ministry does not accept the appellant's contention that the ministry would not accommodate their enrollment in a SEP.

Change in Policy/Repeal of Legislation:

In response to the appellant's argument that the ministry has changed its policy and repealed legislation to prevent them from succeeding on reconsideration, the ministry says that policy and legislation change and are updated often. While the ministry representative cannot give reasons for specific changes, the ministry denies that any changes were connected to the appellant's situation.

Underpayment of Benefits:

The ministry explained that earned income only affects the amount of disability assistance when the income is more than the AEE; if the recipient's earned income is less than the AEE, the ministry does not pay them the difference between their income and the AEE.

Panel Decision:

Failure to Report Income:

The legislation sets out the reporting responsibilities of recipients of disability assistance. As stated above, under EAPWDA section 11, a recipient of disability assistance must submit a report to the ministry every month, that includes any change in circumstances, or information that may affect their eligibility. Under EAPWDR section 29, the report must be submitted by the 5th of the month and must include all income received and the source of the income.

The appellant admits that they did not report to the ministry that they were self-employed, and they did not report any income to the ministry in 2018 or 2019. Their stated reason is that they did not trust that the ministry would understand self-employment income, and they thought CRA would share their net income information with the ministry. It appears that the appellant was concerned about exactly what has happened – that their gross income, rather than their income net of expenses, would be applied to reduce the amount of their disability assistance.

The panel finds that the appellant and his spouse were aware of the reporting requirement and chose not to report either their self-employment or their income. The panel notes that the appellant's spouse had reported income from house cleaning in the past, which tends to confirm that they were aware of the reporting requirement. There also appears to be a deliberate choice to report their activities in a way they hoped was technically correct – saying they were looking for work because they were always looking for new clients for their business – but which failed to disclose their self-employment.

The appellant refers to EAPWDA section 22(2) and says they did not intend to provide false or misleading information to the ministry. The panel notes that section 22 covers the offence of providing false or misleading information under the EAPWDA. The reconsideration decision, and this appeal, do not have anything to do with section 22 or offences under the EAPWDA. However, the panel understands the appellant to be arguing that they should not be penalized for their failure to report their income because they did not intend to mislead the ministry.

Whatever the reason for the decision, the panel notes that the appellant did not report even the amounts that he declared to CRA as his net income, or the amounts that they withdrew as partner payouts and salary. The panel finds that the appellant chose not to report the earned income of himself and his spouse in 2018 and 2019.

Calculation of Net Income:

Disability assistance is calculated as the amount set out in EAPWDR Schedule A, minus the family's net income as determined under Schedule B. Under EAPWDR Schedule B section 1, all earned income must be included in the calculation of net income, except deductions permitted under section 2, and earned income exemptions under sections 3 and 4.

The only deductions from earned income permitted under Schedule B section 2 are the amounts specified in that section and deducted at source: income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues. Section 3 provides for the AEE, which in 2018 and 2019 was \$14,400 per year. Section 4 permits deduction of specified small business operating expenses from earned income “*if the recipient is participating in a self-employment program.*”

The appellant was not participating in a self-employment program. However, the appellant argues that, in determining the amount of disability assistance for which they are eligible, the ministry should calculate their income as if they were participating in a SEP. They ask that the ministry only consider their income net of operating expenses, in the same way the appellant calculates their net income for CRA. The appellant maintains, in effect, that it is the ministry’s fault that they were not enrolled in the SEP before 2021, and therefore it is unfair for the ministry to require them to be enrolled in the SEP before allowing them to deduct expenses from self-employment income. The appellant also says that it should be obvious that they had to incur expenses in order to earn the income.

It is unfortunate that the appellant did not report any information to the ministry that might have alerted them to the existence of the SEP. However, the ministry does not have discretion under the legislation to backdate participation, or to exempt earned income other than as permitted under EAPWDR Schedule B.

The panel finds that the ministry applied the legislation reasonably in its calculation of the appellant’s earned income.

Change in Policy/Repeal of Legislation:

The panel finds that there is no evidence that the ministry changed legislation or policy around SEP or AEE to prevent the appellant from being able to deduct business expenses from gross self-employment income before they were enrolled in a SEP.

Underpayment of Benefits:

While the ministry stated in the reconsideration decision that underpayment of disability assistance was not the subject of the appeal, the panel finds that the underpayment alleged by the appellant is relevant to the overall calculation of earned income as it relates to the AEE. The panel notes that AEE is an exemption, not a benefit paid to a recipient of disability assistance. If a recipient’s income is less than the AEE, that amount is exempt from the calculation of net income. The ministry does not pay the difference to the recipient.

Conclusion:

The panel finds that the ministry’s decision that the appellant had received an overpayment of disability benefits for which they were not eligible, in the amount of \$3818.19, was a reasonable application of the legislation in the appellant’s circumstances.

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

Appendix A

Employment and Assistance for Persons with Disabilities Act

Reporting obligations

s. 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.

Overpayments

s. 18 (1) If disability assistance, hardship 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*].

Offence of supplying false or misleading information

s. 22 (1) A person commits an offence who supplies, in an application under this Act or when directed or required under section 10 (1), (2) or (3) [*information and verification*], section 11 [*reporting obligations*] or the regulations, information that is false or misleading with respect to a material fact.

(2) A person does not commit an offence under subsection (1) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

(3) A person who commits an offence under this section is liable on conviction to a fine of not more than \$2 000 or to imprisonment for not more than 6 months or to both.

(4) If a person is convicted of an offence under this section, in addition to a penalty that may be imposed under subsection (3), the court may order the person to repay the government all or part of any amount that person received under this Act as a result of committing the offence.

(5) If the court makes an order under subsection (4) and the amount ordered to be paid is not paid immediately, the government may file the order with a court in British Columbia that has jurisdiction.

(6) An order filed under subsection (5) may be enforced in the same manner, as applicable, as if it were

(a) a judgment of the Supreme Court, or

(b) a payment order of the Provincial Court.

Employment and Assistance for Persons with Disabilities Regulation

Definitions

s. 1 (1) In this regulation:

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

(b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

Limits on income

s. 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.

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.

Reporting requirement

s. 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);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [*Workers Compensation Act*](#) as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form specified by the minister:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) received by the family unit in the calendar month.

Schedule A

Disability Assistance Rates

(*section 24 (a))*

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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly support allowance

s. 2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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
2	Sole applicant / recipient and one or more dependent children	Applicant / recipient is a person with disabilities	\$1 133.50
3	Two applicants / recipients and no 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	\$1 378.50
4	Two applicants / recipients and no dependent children	Both applicants / recipients are persons with disabilities	\$1 853.50
5	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	\$1 628.50
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
7	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities	\$1 953.50
8	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 65 or more years of age	\$1 728.50
9	Sole applicant / recipient and one or more dependent children	Applicant / recipient is a person with disabilities and a warrant has been issued for the applicant / recipient	\$1 033.50
10	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, and the other is under 65 years of age, and a warrant has been issued for one	\$1 033.50
11	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities, and the other is 65 or more years of age and a warrant has been issued for that applicant / recipient	\$1 033.50
12	Two applicants / recipients and no dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is 65 or more years of age	\$1 033.50
13	Two applicants / recipients and no dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for one	\$1 260.50

14	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, and the other is under 65 years of age and a warrant has been issued for that applicant / recipient	\$1 378.50
15	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is under 65 years of age	\$1 378.50
16	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and the other is under 65 years of age, and a warrant has been issued for both	\$1 328.50
17	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, and the other is 65 or more years of age and a warrant has been issued for that applicant / recipient	\$1 628.50
18	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and a warrant has been issued for that applicant / recipient, and the other is 65 or more years of age	\$1 628.50
19	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities and the other is 65 or more years of age, and a warrant has been issued for both	\$1 578.50
20	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for one	\$1 853.50
21	Two applicants / recipients and one or more dependent children	Both applicants / recipients are persons with disabilities and a warrant has been issued for both	\$1 803.50

Monthly shelter allowance

s. 4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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
2	2 persons	\$570
3	3 persons	\$665
4	4 persons	\$715
5	5 persons	\$765
6	6 persons	\$815
7	7 persons	\$865
8	8 persons	\$915
9	9 persons	\$965
10	10 persons	\$1 015

Schedule B

Net Income Calculation

(section 24 (b))

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:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]

(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
 - (A) 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
 - (B) 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;
- (xii.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*;
- (xii.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*;
- (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;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (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
- (A) the Sixties Scoop Settlement made November 30, 2017, or
- (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (xviii) financial assistance payments provided under Part 6 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;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) 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*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) 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;
- (xxvi) a loan that is
- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
- (B) received and used for the purposes set out in the business plan;
- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (A) Autism Funding: Under Age 6 Program, or
- (B) Autism Funding: Ages 6 — 18 Program;
- (xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]
- (xxix) 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;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxii) 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;

(xxxiii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiv) 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;

(xxxv) money withdrawn from a registered disability savings plan;

(xxxvi) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvii) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxviii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxix) 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;

(xl) 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;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xliii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xliv) 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;

(xlv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

- (xlv) a BC early childhood tax benefit;
- (xlv.1) a BC child opportunity benefit;
- (xlvi) child support;
- (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) 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;
- (liii) 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;
- (liv) 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;
- (liv.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;
- (liv.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;
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

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

(lvii) 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;

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

(liv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lx) 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);

(lxi) 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;

(lxii) a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the *Insurance (Vehicle) Act* and the plan operated under that Act;

(lxiii) an amount that is paid or payable, as a single payment or series of payments, as follows:

(A) the amount is paid or payable by a person who is or was a landlord, owner or manager, or a person who holds or held a similar position, in relation to leased, rented or licensed residential premises, whether or not the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* applies to that premises;

(B) the amount is paid or payable to a person who is or was a tenant, lessee, licensee or occupant, or a person who has or had a similar right or permission to use the premises for residential purposes;

(C) the amount is paid or payable as full or partial compensation for loss of the residential use of the premises, including for eviction, relocation, demolition, temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use;

(D) the amount is paid or payable under an enactment, a policy or a contract, or voluntarily or at the discretion of the person referred to in clause (A);

(lxiv) money that is paid or is payable to or for a person from a settlement under the Williams Treaties Settlement Agreement signed August 22, 2018;

(lxv) money that is paid or is payable to or for a person from a settlement under the Missanabie Cree First Nation Treaty Land Entitlement Settlement Agreement signed April 24, 2020;

(lxvi) money that is paid or is payable to or for a person from a settlement under the Peepeekisis Cree Nation File Hills Colony Specific Claim Settlement Agreement signed March 23, 2021;

(lxvii) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis,

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(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 earned income

s. 2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(i) income tax,

(ii) employment insurance,

(iii) medical insurance,

(iv) Canada Pension Plan,

(v) superannuation,

(vi) company pension plan, and

(vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

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.

(8) Repealed. [B.C. Reg. 268/2020, App. 4, s. 1 (b).]

Small business exemption

s. 4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;

(b) accounting and legal services;

(c) advertising;

(d) taxes, fees, licences and dues incurred in the small business;

(e) business insurance;

(f) charges imposed by a savings institution on an account and interest;

(f.1) payments, including principal and interest, on a loan that is

(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(ii) received and used for the purposes set out in the business plan;

(g) maintenance and repairs to equipment;

(h) gross wages paid to employees of the small business, but not including wages paid to

- (i) the person participating, or
- (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the *Canada Pension Plan*;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.
- (2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if
 - (a) the recipient is participating in a self-employment program, and
 - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

APPEAL NUMBER 2022-0071

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)

2022/05/31

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2022/05/31

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2022/05/31