

Appeal Number 2022-0113

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Innovation and Poverty Reduction (the ministry) dated May 17, 2022 that denied the appellant income assistance because her net income is more than the rate of assistance for her family unit size.

### **Part D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 2.01, 9, and 29

Schedule A sections 1, 2 and 4

Schedule B sections 1, 6 and 7

Employment Insurance Act section 22, 23 and 23.2

## Part E – Summary of Facts

From ministry files:

- The appellant and her spouse receive disability assistance as a couple. The spouse is over 65 years of age and has Persons with Disabilities designation. The appellant is under 65 years of age. Her file has been open since December 10, 2021.
- The ministry receives information from Service Canada in an electronic data match called the EI/MHSD Common Claimant Report.

A Common Claimant Report dated April 25, 2022 shows the appellant received EI payments of \$444 weekly for 7 weeks starting on February 27, and so on March 6, March 13, March 20, March 27, April 3 and April 10, 2022. She did not receive EI for the week starting February 20, 2022.

In her monthly report dated April 25, 2022 and, according to ministry records, received on April 29, 2022 the appellant declared \$1332 for EI received in March and her spouse declared \$475.20 for Old Age Security (OAS) and \$545.92 for Canada Pension Plan (CPP).

The appellant's bank statement confirms a deposit of \$1332 for EI on March 11, 2022. The spouse's bank statement confirms a deposit of \$475.20 for CPP and \$ 545.92 for OAS, both deposited on February 17, 2022.

In her request for reconsideration dated May 5, 2022 the appellant wrote that she did not understand that her EI was not exempt - this misunderstanding has left her without funds to move. She lives in a hotel that she is required to leave by May 15, 2022. She also needs to take a 48 hour trip "to the coast" to visit her father-in-law who has fallen ill. She has to come up with money for rent, gas, a moving truck, and a \$175 tow bill.

In her Notice of Appeal dated May 31, 2022 the appellant wrote "I am still in need of assistance to prevent becoming homeless with a 65 year old disabled husband. Ended up on EI - and 70\$ over being eligible for assistance - but need (immediate help for shelter deposit)".

At the hearing the ministry summarized the reconsideration decision and clarified that eligibility is determined month to month. If a client is not eligible for assistance they are automatically not eligible for benefits such as a moving supplement or a crisis supplement. The appellant did not attend the hearing.

**Part F – Reasons for Panel Decision**

The issue in this appeal is whether the ministry decision that denied the appellant income assistance because her net income is more than the rate of assistance for her family unit size is reasonably supported by the evidence or a reasonable application of the legislation.

Under section 1 of the EAPWDR, "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from employment insurance, any type or class of Canada Pension Plan benefits and Federal Old Age Security.

Section 2.01 of the EAPWDR applies for assistance for a calendar month after April 2020. As of December 13, 2021 it states (in part) that employment insurance for a period ending before November 21, 2021 is exempt from income calculations if someone in the family unit was eligible for disability assistance on April 2, 2020.

Section 9(2) of the EAPWDR states a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A.

Section 29 of the Regulation says a person must report income by the fifth of the month after the month they receive it. The ministry uses this information to calculate the appellant's net income and eligibility for her next month's disability assistance. For example, she must report the income she received in March by April 5, and it affects her May assistance.

Sections 2 and 4 of Schedule A outline the maximum allowable rate of support and shelter for the size of the family unit before net income deductions. For a couple in which one recipient is a Person with Disabilities, the other is not and is under 65 years of age the rate of support is \$1378.50, and the rate of shelter is \$570 for a total of \$1948.50.

Schedule B of the EAPWD Regulation shows us how to calculate net income:

Section 1 lists the types of income that are exempt from the net income calculation and says that a family unit's net income includes all earned and unearned income, except for the permitted exemptions and deductions under Schedule B.

Section 6 (a) says the only deductions permitted from unearned income are any income tax deducted at source from employment insurance benefits.

Section 7 lists unearned income that is exempt for the purposes of calculating net income. Employment Insurance is not exempt as income unless it is for maternity, parental or benefits to care for a critically ill child. Canada Pension is not exempt unless it is for an orphan's benefit or a disabled contributor's child's benefit paid or payable under the Canada Pension Plan.

**Appellant's Position**

The appellant argues she should be eligible for disability assistance because she did not understand that her EI was not exempt and as a result she is left without funds for rent, gas, moving expenses. She also needs money for a 48 hour road trip to visit her sick father-in-law. Without assistance the appellant and her 65 year old disabled husband will be homeless.

### Ministry's Position

The bank statements the appellant provides confirm she received \$1332 EI in March and her spouse received \$475.20 for OAS and \$545.90 for CPP. As the appellant and her spouse were not eligible on April 2, 2020 and her EI is paid for a period after November 21, 2021 an EI exemption as set out in section 2.01 of the EAPWDR does not apply in the appellant's circumstances. As the appellant's EI is not for maternity, parental or benefits to care for a critically ill child, it is not exempt under Schedule B of the EAPWDR. Similarly, as the appellant's spouse's CPP income is not for an orphan's benefit or a disabled contributor's child's benefit, it is not exempt. There are no exemptions permitted for Federal Old Age Security income.

In March the combined income of the appellant's family unit is \$2353.10. As the appellant's income is more than the \$1948.50 rate of assistance under Schedule A she is not eligible for disability assistance. The ministry noted that the appellant's monthly EI will increase to \$1776 per month and her spouse's OAS and CPP is also expected to continue for a total of \$2797.10 per month.

### Panel Decision:

The panel finds that the ministry decision that denied the appellant income assistance because her net income is more than the rate of assistance for her family unit is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant.

The panel finds the ministry determined correctly that none of the 3 types of family income is exempt from income calculation. The appellant's EI is not exempt because she was not eligible on April 2, 2020 and only started receiving it after November 21, 2021 (a cut-off date set out in section 2.01 of the EAPWDR), and because there is no evidence that it is for maternity, parental or benefits to care for a critically ill child as set out in Schedule B. Similarly, there is no evidence that the spouse's CPP income is for an orphan's benefit or a disabled contributor's child's benefit. There are no exemptions permitted for Federal Old Age Security.

The panel further finds the ministry correctly calculated the combined family income as documented by the appellant's and her husband's bank records, her Common Claimant Report and her monthly report. In March 2022 she received \$1332 for EI and her husband received \$475.20 for OAS and \$475.20 for CPP. These amounts add up to a family income of \$2353.10 which is more than the assistance rate of \$1948.50 set out in Schedule A.

The panel sympathizes with the appellant who faces financial problems because she was under the misapprehension that her EI would be exempt from her family income. The panel notes that only earned income and certain *Workers Compensation Act* payments qualify for the annual exemption limit. However, the panel finds the ministry reasonably concluded that her EI was not exempt from family income calculation and she is not eligible for disability assistance.

### **Conclusion**

The panel finds that the Ministry's decision that the appellant is not eligible for income assistance because her net income is more than the rate of assistance for her family unit size is reasonably supported by the evidence and a reasonable application of the EAPWDR in the circumstances of the appellant. The ministry's decision is confirmed and the appellant is not successful in her appeal.

## Employment and Assistance for Persons with Disabilities Regulation

### Definitions

1 (1) In this regulation:

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

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;**
- (g) employment insurance;**
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;**
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

(2) Subsection (2.1) applies to a child if

- (a) the child relies on both parents for the necessities of life, and
- (b) the child resides
  - (i) with each parent for 50% of each month in circumstances where the parents live in different residences, or
  - (ii) with both parents in circumstances where the parents live in the same residence but are not spouses.

(2.1) For the purposes of the Act and this regulation, a child described in subsection (2)

- (a) is a dependent child of the parent who is an applicant or recipient, provided only

one of the parents is an applicant or recipient, or

(b) if both parents are applicants or recipients, is a dependent child only of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

**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, or

(b) a family unit that is described in section 2.1 (1) (a) of the Employment and Assistance Regulation.

...

(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:

(a) an income support payment under the *Canada Emergency Response Benefit Act*;

(a.1) a benefit under the *Canada Recovery Benefits Act*;

(a.2) a benefit under the *Canada Worker Lockdown Benefit Act*;

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

(c) pandemic pay...

**Limits on income**

**9**

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

**Amount of disability assistance**

**24** Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

**Reporting requirement**

**29** For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(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**

**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**

**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
- (b)the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
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

**Monthly shelter allowance**

**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 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
2	2 persons	\$570

**Schedule B**  
**Net Income Calculation**

**Deduction and exemption rules**

**1** When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (a) the following are exempt from income:
- (i) any income earned by a dependent child attending school on a full-time basis;
  - (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;
- (xxxi) 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;

- (xxxii)a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiii)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;
- (xxxiv)money withdrawn from a registered disability savings plan;
- (xxxv)a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi)Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxvii)the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii)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;
- (xxxix)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;
- (xl)payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli)payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii)payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xliii)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;
- (xliv)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;

(lviv) 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 unearned income**

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

### **Exemptions — unearned income**

7

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for

- (i) disability-related costs,
- (ii) the acquisition of a family unit's place of residence,
- (iii) a registered education savings plan, or

- (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
  - (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
  - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
  - (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula (A-B) x C, where
  - A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;
  - B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or
    - (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
  - C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;
- (f) a tax refund;
- (g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.**

- (2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if
- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
  - (b) the settlement agreement requires the defendant to
    - (i) make periodic payments to the person for a fixed term or the life of the person,
    - (ii) purchase a single premium annuity contract that
      - (A) is not assignable, commutable or transferable, and
      - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
    - (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
    - (iv) remain liable to make the payments required by the settlement agreement.

**Employment Insurance Act  
S.C. 1996, c. 23**

**Pregnancy**

- **22 (1)** Despite section 18, but subject to this section, benefits are payable to a claimant who proves her pregnancy....

**Parental benefits**

- **23 (1)** Despite section 18, but subject to this section, benefits are payable to a claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides...

**Benefits — critically ill child**

- **23.2 (1)** Despite section 18, but subject to this section, benefits are payable to a claimant who is a family member of a critically ill child in order to care for or support that child, if a medical doctor or nurse practitioner has issued a certificate that
  - **(a)** states that the child is a critically ill child and requires the care or support of one or more of their family members; and
  - **(b)** sets out the period during which the child requires that care or support...

APPEAL NUMBER 2022-0113

**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)  and Section 24(1)(b)   
Section 24(2)(a)  or Section 24(2)(b)

**Part H – Signatures**

Print Name  
Inge Morrissey

Signature of Chair

Date (Year/Month/Day)  
2022/06/20

Print Name  
Glenn Prior

Signature of Member

Date (Year/Month/Day)  
2022/06/20

Print Name  
Melissa McLean

Signature of Member

Date (Year/Month/Day)  
2022/06/20