

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated May 24, 2022, which found that the Appellant had received an overpayment of \$23,262.56 and must repay this amount to the Ministry.

**Part D – Relevant Legislation**

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

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

**The relevant legislation is provided in the Appendix**

**Part E – Summary of Facts**

The Appellant is a sole recipient of disability assistance (DA).

The evidence before the Ministry at reconsideration included:

- Seventy-four pages of account activity statements for an account at a financial institution, printed on December 17, 2019, and identifying activity on the account between January 1, 2018 and October 31, 2019 (the Bank Statements);
- A Seventeen-page document prepared by the Ministry and printed on December 29, 2021 titled “OVERPAYMENT CHART” in the name of the Appellant for each of the 22 calendar months between March 2018 and December 2019 inclusive (the Overpayment Chart). The Overpayment Chart shows the date the Ministry determined that the Appellant received unearned income and the amount received, together with the Appellant’s monthly assistance amount, the monthly amount for which he was eligible, and the monthly overpayment amount. The Overpayment Chart also shows a total assistance amount of \$26,599.24, an eligible amount of \$3,336.68, and an overpayment amount of \$23,262.56; and
- The Appellant’s Request for Reconsideration (RFR), dated January 25, 2022, which included:
  - An undated two-page letter from a disability support advocate at a community social services agency, written on behalf of the Appellant in which the disability support advocate writes (in relation to the information in the Bank Statements):
    - That “*due to the erratic financial patterns in (the Appellant’s) bank accounts, it was very difficult to determine what deposits came from gambling as opposed to other sources of income*” and that the Appellant could not remember with certainty the “*source of most of this income*” two years after the fact; and
    - “*(The Appellant) describes withdrawing cash from his Visa to use for gambling, with the winnings being deposited into either his chequing account or transferred back onto his Visa. We would argue a portion of the overpayment debt could potentially be money taken from (the Appellant’s) Visa debt, then transferred into his chequing account with some of the gambling winnings.*”

The disability support advocate also provides information about the Appellant’s history of what the disability support advocate refers to as the Appellant’s “*severe and chronic gambling addiction*” ; and,

- A one-page letter dated February 15, 2022 from the Appellant’s family physician (the FP), addressed “*To Whom It May Concern*” (the FP’s Letter), in which the FP writes:
 

“*(The Appellant) has been my patient since 2006. He has mental health conditions dating back over 30 years including gambling addiction, posttraumatic stress disorder, anxiety and depression. This has led to incarcerations, psychiatric hospitalizations,*

*psychotherapy and gambling counselling. His recovery journey over a decade has been successful for the past 1 year with no further gambling.”*

### **Additional Information**

In the Notice of Appeal (NOA) dated May 31, 2022, the Appellant said that he disagreed with the decision but did not indicate why.

### **Evidence Presented at the Hearing**

At the hearing, the appellant was represented by a different advocate from the same community social services agency referenced in Part E above. Both the Appellant and the different representative (the Advocate) provided verbal evidence at the hearing.

At the hearing, the Advocate said that there was no definition of “disability” in the provincial legislation or at the federal government level, and read out a definition provided by the United Nations. The Advocate provided additional background information about the Appellant, including his doctor’s diagnosis of several severe mental impairments as expressed in the FP’s Letter (gambling addiction, posttraumatic stress disorder, anxiety and depression) dating back over 30 years. The Advocate argued that the Ministry should have considered the Appellant’s mental impairments when it investigated him and the difficulty he would have had due to those impairments in trying to recall and confirm details about the source of money for deposits made to his account two or three years ago.

The Appellant provided more background information, including details about physical abuse he and his sibling had experienced as young children. He explained how these factors brought on additional stress and depression and made it even more difficult for him to cope when the Ministry began its investigation into his apparent excess income (the Investigation), adding that the stress made him feel like he was “*on the verge of a nervous breakdown*” and that having to explain the source of the money going into his bank account to the Ministry investigator (the Investigator) made him feel like he was “*being victimized all over again*”. He also noted that at the time of the Investigation he was dealing with his ailing mother’s financial affairs, which added more stress.

The Appellant said that he didn’t know that gambling winnings had to be declared as income and the Ministry was aware of his gambling addiction when he was designated as a person with disabilities (PWD). He explained that he didn’t have the opportunity to report changes in his income because the Ministry had stopped sending him the requests to submit monthly reports of changes to his monthly income with the deposit information he got in the mail each month after his DA had been electronically deposited to his bank account. He said that he had asked the Ministry to provide him with the monthly report forms a number of times, but they never came. He explained that he doesn’t use a personal computer because of his gambling addiction and relies on phone banking to pay bills, and ATMs and in person visits to the bank to make deposits to his account. He also said that casinos pay out winnings only in cash and in multiples of one dollar amounts and because ATMs don’t accept coins on deposit, any deposits

showing on his bank statement for an amount including cents could not have been entirely comprised of gambling proceeds. As an example, the Advocate referred a June 11, 2018 ATM deposit in the amount of \$435.45 showing on the Appellant's bank statement, which the Advocate argued would had to have been for \$435.00 if it was entirely made up of gambling winnings. The Appellant said that he did not intend to defraud the Ministry and was trying his best to live with his illness.

In response to a question from the Panel, the Appellant confirmed that the handwritten "*gambling*" notations on the Bank Statements were written either by him or by the disability support advocate and that any other sources of income noted on the Bank Statements, such as a handwritten notation reading "*Fee paid to paint neighbour's home (4 day job)*" next to a June 21, 2018 deposit of \$700 were for casual work that the Appellant had done and that the income from those jobs had also not been reported to the Ministry. In response to a follow-up question from the Panel put to the Ministry, the Ministry explained that DA recipients have an annual earnings exemption, which means that deductions are not made for any employment income under the annual exemption amount, and that the total of the Appellant's earnings for the period in question were under the annual limit.

In response to another question from the Panel, the Appellant said that he didn't know what his gambling winnings were over the period of the Investigation, but that when co-mingled deposits such as credit card cash advances were considered it would have been "*maybe in the neighbourhood of \$5,000 at the most*". He also said that between 2018 and April 2019 he was looking after his late mother's financial affairs. He explained that his financial institution, which was also the one that his mother used, had expressed concern that his mother was "*likely the victim of scammers*". The Appellant said that he arranged to be "*put on her bank account*" in 2018. As a result, from that date up until just after her passing in late March 2019 he "*took care of (his mother's) bills*". Because he relied on phone banking to pay his bills and couldn't pay his mother's bills using phone banking, he had to transfer funds from his mother's bank account to his so that he could pay the bills on her behalf.

The Appellant also said that shortly before her death his mother was experiencing symptoms of dementia and he found "*envelopes of cash*", totalling over \$10,000, in her home. The Appellant said that some of these funds, including money to cover a credit card debt of \$4,000, were used to pay her bills so that she would have no debts when she passed away. The Appellant explained that he deposited a large share of the over \$10,000 in cash that he found in his mother's home into his bank account so he could pay bills on her behalf, and that he kept track of those payments in a ledger. The Appellant said that he still has the ledger, which he brought to a meeting with the disability support advocate, and told the Investigator that he had a ledger, but did not provide it to the Investigator.

In response to another question from the Ministry about a large number of transfers to and from three other bank accounts identified in the Appellant's Bank Statements, the Appellant said that two of them, a high interest savings account and another chequing account, were his and that the third account, identified as a "chequing plus" account, was likely his mother's.

In response to a question from the Ministry, the Advocate said that they had considered trying to obtain copies of the Appellant's credit card statements (to show that there were some cash advances made from the Appellant's credit card on the dates that gambling winnings were recorded as deposits in his bank account) but the Appellant did not have access to electronic copies of those statements because he didn't have a computer, and getting paper copies from the Appellant's financial institution would take some time and the Appellant would have had to pay a fee to get them.

In response to another question from the Ministry, the Appellant said that he did have an advocate assist him during the investigation (the disability support advocate) but that "*they were not as helpful as (the Advocate)*".

At the hearing, the Ministry relied on its RD and stressed that the issue in this appeal is whether the Ministry applied the legislation fairly. The Ministry also argued that the Appellant had had lots of time to gather information for the Investigation, that most of the deposits to his bank account were marked "*gambling*", and in other case the Appellant had failed to show what the other sources of the money might have been. So they had to conclude it was gambling.. The Ministry explained that its policy requires that a client under investigation receive two letters before the Ministry holds back DA or IA for non-compliance. The first of these letters was sent to the Appellant on December 15, 2021. The second letter, which forms part of the appeal record, was dated December 29, 2021, and says, in part, "*The ministry sent you a letter on December 15, 2021. This letter informed you of the overpayment. It also invited you to contact the ministry to discuss it. The ministry did not receive any additional information from you regarding the overpayment.*" The Ministry also said that it can assist with obtaining documents, and often grants "*some leeway*" in applying the deadline for non-compliance.

In summary, the Ministry said that it must follow the legislation, that its RD was made based on the information it received from the Appellant in response to the Investigation, and argued that the Appellant "*had ample time to provide more information*". The Ministry also said that in a situation where an overpayment has been made, the amount recovered is \$10 per month (though the amount might be as much as \$20 per month if other debts, such as a rent deposit, are also involved), and that no interest is charged on the amount owed. The Advocate said that that might be the case for a client under 65 years of age, but that once a client who owes money to the Ministry has reached retirement age, a debt like this will result in a 25% garnishment reduction in the federal Old Age Security and (if applicable) the Guaranteed Income Supplement until the debt is settled.

In response to question from the Panel, the Ministry said that it removed the monthly reporting requirement for PWD and replaced it with an annual reporting requirement in 2018, and provided all DA recipients with a letter at the time explaining the change.

The Panel asked the Ministry if the total amount owing by a client might be recalculated in a situation where new incontrovertible evidence is provided showing that an adjustment to the

amount owing is required, even after its decision on the overpayment amount was made. The Ministry indicated that such an adjustment might be made, depending on the circumstances.

### **Admissibility of New Evidence**

Section 22(4) of the Employment and Assistance Act (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

At the hearing, the Appellant stated that he had found \$10,000 in his mother's home and had used that money to look after her financial affairs, sometimes co-mingling that money with his own by depositing it into his bank account before paying some of his mother's debts on her behalf, and that some of the amounts deposited to his account and identified as gambling proceeds might have included those funds. The Appellant also said that he had a ledger to support this and had offered to provide it to the Ministry investigator. This was considered by the Panel to be new evidence. The Panel considered the new verbal evidence presented at the hearing to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, pursuant to Section 22(4) of the EAPWDA.

General principles of weighing evidence require that the evidence be considered based on its credibility and its probative value. The probative value of evidence is the degree to which the information is useful in answering the question which must be addressed.

As no written evidence was presented in support of the new verbal evidence presented at the hearing, the Panel considers the new verbal evidence to be hearsay, on which basis its credibility cannot reasonably be established.

Regarding probative value, the issue in this appeal is whether the Ministry reasonably determined that the Appellant had received any non-exempt unearned income in the form of the proceeds of a lottery or a game of chance, pursuant to EAPWDR Section 1(1)(r). In addition, EAPWDA Section 18(2) says that a Ministry decision about the amount of an overpayment a person is liable to repay is not appealable. Accordingly, the Panel considers the new evidence to be of no probative value as it an argument relating to the amount of an overpayment that the Ministry has calculated, and as a result is not useful in answering the question which must be addressed in this appeal (i.e., whether the Appellant has received any non-exempt unearned income in the form of the proceeds of a lottery or a game of chance).

Because the credibility of the new verbal evidence cannot be established and because it has no probative value, the Panel assigns it no weight.

**Part F – Reasons for Panel Decision**

The issue under appeal is whether the Ministry's RD, which found that the Appellant received an overpayment of DA totaling \$23,262.56, which he is required to repay because it was non-exempt unearned income and had not been deducted from his DA, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. In other words, was it reasonable for the Ministry to determine that the Appellant received DA in excess of the eligible amount for the months of January 2018 through October 2019 because he received unearned income during that period?

***Position of the Parties***

The Appellant's position is that, while he does not dispute that he had received unearned income as a result of his gambling, he was not aware that gambling income had to be reported to the Ministry and the total amount the Ministry had calculated as his undeclared gambling income was far in excess of the actual amount he had won, which was more likely approximately \$5,000.

The Ministry's position is that the money the Appellant received from gambling winnings, which it calculates to be \$23,262.56, is considered unearned income because it is not earned income and it was money received from a lottery or game of chance. In addition, the Ministry determined that money received from a lottery or game of chance is not an allowable exemption from a person's net income.

***Panel Decision***

There are potentially four issues in this appeal:

- Did the Ministry reasonably determine that the Appellant had received unearned income that was not reported;
- As a result, was the Appellant paid DA to which he was not entitled;
- If the Appellant was overpaid the amount of DA to which he would otherwise have been entitled, is he required to repay it; and,
- Was the amount of unearned income the Appellant received reasonably calculated based on the available evidence?

**Unearned Income**

On the first issue, Section 1 of Schedule B of the EAPWDR lists the types of income, benefits and tax credits that are exempt from the calculation of income. Gambling winnings are not included in that list. Section 1(1) of the EAPWDR says that, without limitation, unearned income includes money received from a lottery or a game of chance. Section 6 of Schedule B of the EAPWDR says that the only two deductions permitted from unearned income are income tax deducted at source from employment insurance benefits and the essential operating costs of

renting self-contained suites. Section 7 of Schedule B of the EAPWDR provides a list of exempt unearned income. Gambling winnings are not included in that list. The legislation says that without limitation or exemption money received from a game of chance is considered unearned income. Because the Appellant has acknowledged that he received income from gambling that he did not report and as he had indicated on the Bank Statements that many of the deposits represented the proceeds of gambling, the Panel finds that the Appellant received unearned income and that this income was not reported to the Ministry. Accordingly, the Panel finds that the Ministry reasonably determined that the Appellant received unearned income that was not reported.

#### Receipt of DA

Regarding the second issue, Section 9(2) of the EAPWDR says that a PWD is not eligible for DA if their net income equals or exceeds the amount of DA determined under Schedule A of the EAPWDR, and Section 24 of the EAPWDR says that DA may be provided to a PWD for a calendar month in an amount that is not more than the amount of DA to which that person is otherwise entitled, minus the PWD's net income. The Panel finds that in some of the months over the period of the Investigation the Ministry's calculation of income earned exceeds the amount of DA to which he was entitled for that month, and in other months the Ministry determined that the Appellant earned non-exempt income which was less than the DA to which he was entitled. Based on all of the evidence, the Panel finds that the Ministry reasonably determined that, during the period in question, the Appellant was paid DA to which he was not entitled.

#### Repayment of Overpayment

With respect to the third issue, Section 18(1) of the EAPWDA says that if DA is provided to someone who is not eligible for it, that person is liable to repay the amount of the overpayment. As the panel has found above that the Appellant received DA that he was not eligible to receive and the legislation requires the repayment of overpayments in such circumstances, the Panel finds that the Ministry reasonably determined that the Appellant is required to repay the amount of the overpayment.

#### Amount of Overpayment

Regarding the fourth issue, Section 18(2) of the EAPWDA says that the Minister's decision about the amount someone is liable to repay is not appealable. Therefore the Employment and Assistance Appeal Tribunal has no jurisdiction over this matter and is unable to make a finding on this question other than to state that the Appellant did receive at benefits that they were not eligible for because they earned non-exempt earned income over the allowable limit and did not report this income to the Ministry.



*Conclusion*

Having considered all the evidence, the Panel finds that the Ministry's RD to be reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision. Consequently, the Appellant is not successful in his appeal.

**APPENDIX – LEGISLATION****Employment and Assistance for Persons with Disabilities Act****Interpretation**

**1** (1) In this Act: ...

“**disability assistance**” means an amount for shelter and support provided under section 5 [*disability assistance and supplements*]; ...

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

“**recipient**” means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit ...;

“**supplement**” means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act; ...

**Reporting obligations**

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

- (a) submit to the minister a report that
  - (i) is in the form specified by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister ...

**Reconsideration and appeal rights**

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

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

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

**Overpayments**

**18** (1) If disability assistance ... is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

**Liability for and recovery of debts under Act**

**19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided ...

**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: ...

(r) a lottery or a game of chance; ...

**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 5<sup>th</sup> day of the calendar month following the calendar month in which one or more of the following occur:

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

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

(ii) change in income received by the family unit and the source of that income; ...

**Schedule A**

**Disability Assistance Rates**

(*section 24 (a) )*

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

**1** (1) ... the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule ...

**Monthly support allowance**

**2** (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

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

**As it read from March 1, 2018 to March 31, 2019:**

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$758.42

**As it read from April 1, 2019 to December 31, 2019:**

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	\$808.42

**Monthly shelter allowance**

4 (2) The monthly shelter allowance ... 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>
1	1 person	\$375

**Schedule B**

**Net Income Calculation**

*(section 24 (b) )*

**Deduction and exemption rules**

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

- (a) the following are exempt from income:
  - (i) any income earned by a dependent child attending school on a full-time basis; ...
  - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
  - (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
  - (v) the basic child tax benefit;
  - (vi) a goods and services tax credit under the *Income Tax Act* (Canada);

- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
  - (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;
- ...

(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; ...

(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; ...

(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; ...

(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) 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;
- (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;
- (xlvi) 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, ...

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under section ...7.

#### **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;

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

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

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) I 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.

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**Part G – Order**

The panel decision is: (Check one)       Unanimous       By Majority

The Panel       Confirms the Ministry Decision       Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?      Yes       No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

Section 24(1)(a)       or Section 24(1)(b)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/06/26

Print Name

Neena Keram

Signature of Member

Date (Year/Month/Day)

2022/06/27

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2022/06/28