

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

The decision under appeal is the reconsideration decision, dated June 16, 2022 (the “Reconsideration”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”), which determined that Worksafe BC payments to the Appellant between 2014 and 2022 were a pension and not exempt from inclusion in the calculation of the Appellant’s net income for the purposes of determining the Appellant’s entitlement to assistance, resulting in an overpayment of the Appellant’s disability assistance in the amount of \$17,765.78.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”)- sections 18, 19  
*Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”)- sections 1, 24, 29, Schedule A- sections 1 and 2, Schedule B- sections 1, 3, 6, and 7

**Part E – Summary of Facts**

The Appellant is a recipient of disability assistance at the rate for a two-parent family with one dependent child. The Appellant's spouse and child were added to the Appellant's file as dependents.

The information before the Ministry at the time of the Reconsideration included the following:

- Letter from Worksafe BC, dated March 7, 2022, to the Ministry with a 23-page printout from Worksafe BC's Claims Management System showing payments made to the Appellant;
- Letter from the Ministry to the Appellant, dated May 12, 2022 (the "Letter"), setting out that the Ministry had reviewed the Appellant's file and determined that an overpayment in the amount of \$17,765.78 had been made to the Appellant between March 2015 and November 2021, due to the Appellant having received undeclared income from Worksafe BC ("Worksafe");
- Overpayment chart, attached to the Letter; and
- The Appellant's Request for Reconsideration, dated June 1, 2022 (the "RFR"), which included a handwritten note from the Appellant setting out that:
  - the Appellant had received a lump sum payment from Worksafe in 2014;
  - the Appellant had reported the lump sum payment and the monthly amount the Appellant had been awarded by Worksafe to a local ministry office;
  - the Appellant was advised by the Ministry worker at the local office that the monthly amount being received need not be reported; and
  - the Appellant was not aware that the monthly amount being received from Worksafe after 2014 was a permanent disability pension related to a 2009 claim.

In the Notice of Appeal, dated June 28, 2022, the Appellant stated that nothing had been hidden from the Ministry, despite the Appellant's Worksafe claim being under a different name.

At the hearing of the appeal, the Appellant stated that a change of circumstances was reported to the Ministry in October 2021, when the Appellant wished to add a spouse and stepchild to his file.

The Appellant described having enrolled with the Ministry in 2014 when Worksafe switched the Appellant's claim to a permanent disability. Prior to receiving the lump sum payment in 2014 and the start of the monthly payments in the amount of approximately \$200.00, the Appellant had received nothing from Worksafe for several years. The Appellant did describe having continued to pursue a claim with Worksafe in the years between the original claim in or about 2009 and the designation by Worksafe of the Appellant's claim as a permanent disability claim.

At the time the Appellant enrolled with the Ministry, the Appellant advised a worker at a local Ministry office of both the lump sum payment and the monthly amount being paid by Worksafe and was advised that the monthly amount was exempt and did need to report it. The Appellant did note that the Worksafe claim is under a different surname than the Ministry file as the Worksafe claim is under the Appellant's mother's last name.

The Appellant advised that he did not recall what documentation he received from Worksafe when the lump sum payment was made and the monthly disability payments started but advised that he brought everything he had with him to the Ministry office.

The Appellant described disclosing the Worksafe monthly pension when he sought to add his spouse and stepchild to his file and reported a change in circumstances to the Ministry in 2021. It appears that this is what triggered the Ministry review of the Appellant's file and the discovery of the overpayment.

Finally, the Appellant described not fully understanding the distinction between temporary disability benefits paid by Worksafe and permanent disability benefits paid by Worksafe. The Appellant also stated that Worksafe didn't explain the distinction when the type of payment being made was changed. The Appellant was adamant that the monthly amount being paid by Worksafe was not something that the Appellant had failed to report and that, in fact, this amount had been reported twice- in 2014, when the Appellant first enrolled with the Ministry, and then again in 2021 when the Appellant sought to add his spouse and stepchild to his file.

The Ministry relied on the Reconsideration and noted that section 29 of the EAPWDR requires recipients of disability assistance to submit a report by the 5<sup>th</sup> day of each calendar month which discloses any changes in income. The Ministry advised that this means that in any month where a recipient receives any income, that income must be reported, even where the amount may be unchanged from a previous month.

The Ministry advised that it had notes of the Appellant's visit to the local Ministry office in 2014 but no notes indicating what the Appellant submitted or what the Appellant may have been advised regarding the monthly Worksafe amount. The Ministry confirmed that the Appellant did not file monthly reports from 2014 to 2021 but that it assumed the reason for this was the lack of any change in the Appellant's circumstances.

The Ministry advised that a review of the Appellant's file was triggered in 2021 when the Appellant reported a change in circumstances and reported the monthly amount being received from Worksafe. The Ministry notes from the Appellant's visit in 2014 were not in evidence before the panel but the Ministry did confirm that its records are consistent with the Appellant's evidence about having attended a Ministry office in or about late 2014.

**Part F – Reasons for Panel Decision**

The issue in this appeal is whether the Ministry was reasonable in its determination that Worksafe BC payments to the Appellant between 2014 and 2022 were a pension and not exempt from inclusion in the calculation of the Appellant's net income for the purposes of determining the Appellant's entitlement to assistance, resulting in an overpayment of the Appellant's disability assistance in the amount of \$17,765.78.

*Panel Decision*

This appeal

Section 24 of the EAPWDR sets out that disability assistance is determined by the amount set out in Schedule A of the EAPWDR for the appropriate configuration of a recipient's family unit less the family unit's net income as determined by Schedule B.

Section 1 of the EAPWDR defines "unearned income" to include workers compensation benefits.

Section 29(a)(iii) of the EAPWDR requires a recipient of disability assistance to report, monthly, any 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). 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. The panel notes that section 29 of the EAPWDR, as it read in 2014, was identical to its current version other than it referred to section 29 and 30 of the *Workers Compensation Act* which, at the time, were the provisions relating to temporary total and temporary partial disability under the *Workers Compensation Act*.

Section 29 of the EAPWDR does not *expressly* require recipients to report permanent disability benefits paid by Worksafe, although it does require recipients to report any changes in income received by the family unit and the source of such income. In this case, the Appellant's evidence was that he disclosed the permanent disability pension to a Ministry worker in 2014 who advised him that the monthly payments need not be reported. The panel accepts that the Appellant did advise the Ministry in 2014 about both the lump sum payment and the monthly pension from Worksafe. Indeed, the Appellant's disclosure of the Worksafe pension in 2021, when advising the Ministry of his changed family circumstances, is entirely consistent with also having made the disclosure in 2014. Although the Appellant did not file monthly reports, the panel also accepts that the Appellant did not do this with any intent to hide the monthly Worksafe pension but, instead, out of a misunderstanding about whether they needed to be disclosed each month after having already been disclosed at the start of the Appellant's enrollment with the Ministry. Given that section 29 does not *expressly* set out a monthly reporting requirement for a permanent disability pension from Worksafe, the Appellant's confusion about this is understandable particularly if, as the Appellant stated, a Ministry worker advised him that it didn't need to be disclosed monthly.

Schedule B sets out several exemptions and deductions and deductions from the calculation of a family unit's net income.

The first set of exemptions from a family unit's monthly net income are found in section 1(a) of Schedule B to the EAPWDR, which sets out several dozen specific categories of income that are exempt. However, permanent disability benefits payable by Worksafe is not one of the categories of income listed under section 1(a) of Schedule B to the EAPWDR. The panel finds that the Ministry reasonably determined that the Appellant's monthly Worksafe pension was not exempt under section 1(a) of Schedule B to the EAPWDR.

Section 1(d) of the EAPWDR sets out that all unearned income except "except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8" must be included in the calculation of a family unit's net monthly income.

As stated above, section 1(1) of the EAPWDR defines unearned income broadly as "any income that is not earned income, and includes, without limitation, money or value received from any of" 25 separate categories of income, including, "workers' compensation benefits and disability payments or pensions." As such, unless deductible under section 6 or exempted by section 3, 7, or 8 of Schedule B to the EAPWDR, the Appellant's monthly pension from Worksafe meets the definition of unearned income and must be included in the calculation of the Appellant's family unit's monthly net income.

Section 3 of Schedule B to the EAPWDR sets out that certain qualifying income is exempt from inclusion in the calculation of a family unit's net monthly income. Qualifying income, however, is specifically defined as either:

- earned income, except the deductions permitted under section 2, or
- unearned income that is compensation paid under section 191 [temporary total disability] or 192 [temporary partial disability] of the *Workers Compensation Act*.

Because the benefits being paid to the Appellant are for a permanent disability, they do not meet the definition of "qualifying income" and are not exempt from inclusion in the calculation of the Appellant's family unit's net monthly income under section 3 of Schedule B to the EAPWDR. The panel finds that the Ministry reasonably determined that the Appellant's monthly Worksafe pension was not exempt under section 3 of Schedule B to the EAPWDR.

Section 6 of Schedule B to the EAPWDR provides for "income tax deducted at source from employment insurance benefits" and "essential operating costs of renting self-contained suites" to be deductible from the calculation of a family unit's net monthly income. As the Appellant's monthly Worksafe pension does not fit into either of these two categories, the panel finds that the Ministry was reasonable in its determination that it was not deductible from net income under section 6 of Schedule B to the EAPWDR.

Section 7(1) of Schedule B to the EAPWDR provides for 10 additional categories of monies payable to recipients of disability assistance that are exempt from inclusion in the calculation of their net monthly income. These are:

- 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;
- \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- 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;
- 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
  - disability-related costs,
  - the acquisition of a family unit's place of residence,
  - a registered education savings plan, or
  - a registered disability savings plan;
- 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;
- 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;
- any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
  - a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
  - a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
  - money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;
- 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) (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*;

- a tax refund;
- a benefit paid under section 22, 23 or 23.2 of the Employment Insurance Act (Canada) to any person in the family unit.

Once again, permanent disability pensions from Worksafe are not among the categories of exemptions provided for under section 7 of Schedule B to the EAPWDR and the panel finds that the Ministry was reasonable in its determination that the Appellant's monthly Worksafe pension was not exempt from being included in the calculation of the Appellant's family unit's net monthly income.

Finally, section 8 of Schedule B to the EAPWDR provides the Ministry with some discretion to exempt educated related unearned income. Specifically, Section 8(2) sets out that the Ministry "may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study". A Worksafe permanent disability pension, however, does not fall under this category of unearned income and the Ministry has no discretion to exempt it. In the result, the panel finds that the Ministry reasonably determined that it had no discretion to exempt the Appellant's monthly Worksafe pension under section 8 of Schedule B to the EAPWDR.

As a result of the fact that the Appellant's monthly Worksafe pension meets the definition of unearned income and is not deductible or exempt under any of the provisions of the EAPWDR, the panel finds that the Ministry was reasonable in its determination that an overpayment had occurred. Section 18 of the EAPWDA makes a recipient of disability assistance liable to the Ministry for overpayments regardless of the reason for the overpayment. The panel finds that the Ministry reasonably determined that the Appellant was liable to it for the overpayment of assistance to the Appellant as a result of the Appellant's monthly Worksafe pension not having been deducted from the Appellant's monthly assistance as unearned income, notwithstanding that the overpayment resulted from a misunderstanding by the Appellant (possibly compounded by advice received from the Ministry itself) about the obligation to report the monthly Worksafe pension each month in which it was received.

In view of all of the foregoing, the Appellant is not successful in this appeal.

### *Applicable Legislation*

Section 18 of the EAPWDA sets deals with overpayments:

#### **Overpayments**

**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*].

Section 19 of the EAPWDA deals with liability for the recovery of debts under the EAPWDA:

**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.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Section 1(1) of the EAPWDR defines unearned income:

**"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.

Section 24 of the EAPWDR sets out the method of calculating monthly disability assistance:

**Amount of disability assistance**

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

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Section 29 describes the reporting requirements for recipients of disability assistance:

**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.

Section 1 of Schedule A to the EAPWDR sets out the maximum amount of disability assistance before the deduction of net income:

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

1 (1) Subject to this section and sections 3 and 6 to 8 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*.

Section 1 of. Schedule B to the EAPWDR sets out the basic deduction and exemption rules for net income:

**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;
- (xlili) 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.

Section 3 of Schedule B to the EAPWDR sets out the rules for the exemption of qualifying income:

**Annual exemption — qualifying income**

**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.

Section 6 of Schedule B to the EAPWDR sets out what items are deductible from unearned income:

**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.

Section 7 of Schedule B to the EAPWDR sets out various exemptions to unearned income:

**Exemptions — unearned income**

7 (0.1) In this section:

**"disability-related cost"** means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

**"disability-related cost to promote independence"** means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

**"intended registered disability savings plan or trust"**, in relation to 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, means an asset, received by the person, to which the exemption under that section applies;

**"structured settlement annuity payment"** means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(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.

Section 8 of Schedule B to the EAPWDR affords the Ministry some discretion to exempt education related income:

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

8 (1) In this section:

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

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

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

Appeal number 2022-0138

**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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/07/25

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2022/07/25

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2022/07/25