

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 22, 2022 which held that the appellant's entitlement to disability assistance needed to be reduced by the amount of employment insurance the appellant's spouse received.

The ministry determined that the employment insurance received by appellant's spouse was not exempt from the net income calculation of the appellant's family unit's net income.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons With Disabilities Regulation*, sections 1, 2.01, 24, Schedule A and Schedule B.

### Part E – Summary of Facts

The information before the ministry at reconsideration included that:

1. The appellant was eligible for, and in receipt of, disability assistance starting in 2016;
2. The appellant's family unit consists of the appellant, the appellant's spouse and two dependent children;
3. The appellant's family unit has a maximum allowable rate of support and shelter of \$1,804.85 which includes a \$687.64 deduction because the appellant receives support under CPP;
4. The appellant's spouse applied for the Canada Emergency Response Benefit but instead received employment insurance;
5. In 2020 the Province enacted a temporary measure removing the deduction of federal employment insurance benefits from the rate of support provided by disability assistance;
6. In December 2021 the Province changed that temporary measure;
7. In March 2022 the appellant's spouse received \$1,358.00 in employment insurance;
8. In April 2022 the appellant's spouse received \$776 in employment insurance; and
9. In May 2022 the appellant's spouse received \$582 in employment insurance.

At the hearing, the appellant stated that they thought that employment insurance was not deducted from disability assistance because that was their experience during the 'pandemic'. The appellant also stated that they filed a complaint with the ombudsperson, but the ombudsperson informed them that the ombudsperson did not have the authority to change legislation.

At the hearing, the ministry was sympathetic to the appellant's efforts to understand the program, recognized that the appellant had been diligent and responsible with their reporting and stated that all recipients of disability assistance received a letter in December 2021 explaining that the temporary measure removing the deduction of federal employment insurance benefits from the rate of support provided by disability assistance would cease.

**Part F – Reasons for Panel Decision*****Introduction***

The issue at appeal is whether the reconsideration decision dated August 22, 2022 which held that the employment insurance received by the appellant's spouse should be considered part of the family unit's net income and consequently subtracted from the appellant's entitlement to disability assistance was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstance.

***Summary of The Relevant Legislation***

Section 1 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR") defines unearned income as including employment insurance.

Section 2.04 of the EAPWDR, which was amended in December 2021, exempts EI payments received before November 21, 2021.

Section 24 of the EAPWDR permits the ministry to provide assistance to a family unit in an amount that is not more than the rate of support and shelter minus the family unit's net income.

The rate of support and shelter is determined by the Disability Assistance Rates provisions stated in Schedule A of the Regulation.

The family unit's net income is calculated through the Net Income Calculation provisions stated in Schedule B of the Regulation.

***The Rate of Support and Shelter Not In Dispute***

The appellant and the ministry did not dispute the appellant's family unit's rate of support and shelter. That amount was \$1478.50 for support allowance, \$715 for a shelter allowance, \$246.99 for a family bonus top-up and \$52 for transportation supplement.

***Deduction for the Appellant's CPP Not In Dispute***

The appellant receives \$687.64 in CPP benefits each month. There is no dispute that CPP benefits are unearned income as defined in the Regulation and therefore part of the family unit's net income.

***The Issue: Is EI received by the appellant's spouse part of the family unit's net income******The Appellant's Position***

At the hearing the appellant stated that the ministry told them that EI payments received by their spouse was exempt. The appellant expected that exempt meant that it was not income and that it was not applied to the annual earning exemption.

The appellant stated that because of that understanding they think that they should receive the full amount of the family unit's rate of shelter and support.

### ***The Ministry's Position***

The ministry agreed that the EI benefits received by the appellant did not apply to the annual earning exemption. That is because qualifying income under that section of Schedule B (section 3(1)) is earned income and EI benefits is unearned income.

The ministry did not agree that EI benefits should not be considered part of the family unit's net income. The ministry stated that EI benefits are unearned income.

### ***The Panel's Decision***

The structure of the legislation is that section 24 of the Regulation uses the general term "family unit's net income" and the way to determine a family unit's net income is provided in Schedule B.

The panel notes that Schedule B of the Regulation is quite detailed and potentially provides a barrier to understanding.

The starting point for determining a family unit's net income is to identify all sources of income – both earned income and unearned income – and then cross-reference those sources with the specific provisions in Schedule B. Schedule B may provide a specific way of dealing with that source of income. For example, the basic child tax benefit (although unearned income) is "exempt from income" under section 1(a)(v) of Schedule B.

The panel reviewed the EAPWDR which creates a very inclusive definition of unearned income that is "any income that is not earned income" and specifically includes "employment insurance" and "any type or class of Canada Pension benefits". Section 1 of Schedule B provides a list of exemptions to "net income"; none of which apply to the appellant. Section 3 of Schedule B allows for an annual earnings exemption which the parties have agreed does not apply. Section 6 of Schedule B allows for exempting "any income tax deducted at source from employment insurance benefits", which again, does not apply.

Section 7 of Schedule B of the Regulation exempts from unearned income a benefit paid under the *Employment Insurance Act (Canada)* related to pregnancy (s.22 of the EI Act), parental benefits (s.23 of the EI Act) or for a critically ill child (s.23.2 of the EI Act). None of those exemptions apply in this situation.

Therefore, the panel finds that the ministry's decision that the appellant's spouse's EI benefit is part of the family unit's net income is supported by evidence and a reasonable application of the legislation.

## Conclusion

There was no dispute that the appellant's family unit's rate of support and shelter was \$1478.50 for support allowance, \$715 for a shelter allowance, \$246.99 for a family bonus top-up and \$52 for transportation supplement.

There was no dispute that the appellant's CPP benefit of \$687.64 per month is part of the family unit's net income.

The panel has determined that the EI benefit received by the appellant's spouse is part of the family unit's net income and consequently the panel confirms the ministry decision to "deduct the amount [the appellant's] spouse receives from employment insurance from your disability assistance."

## Extracts of the Relevant Legislation

### *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:

...

(f) any type or class of Canada Pension Plan benefits;

(g) employment insurance;

...

#### **Modifications in relation to COVID-19 emergency — certain payments**

**2.01** (2) Section 10 (1) is to be read as though it also provided that the following assets are exempt for the purposes of section 10 (2):

'''

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

...

#### **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.

## **Schedule B - Net Income Calculation**

### **Exemptions — unearned income**

**7(1)** The following unearned income is exempt:

...

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

### **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;

...

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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

Trevor Morley

Signature of Chair

Date (Year/Month/Day)

2022/Oct/12

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022/Oct/13

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2022/Oct/13