

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated September 20, 2022, in which the Ministry determined that the Appellant was not entitled to disability assistance (DA) for the month of September 2022.

Specifically, the Ministry determined that a Long-Term Disability insurance benefit (the LTD Benefit) in the amount of \$2,521.46, paid to the Appellant in the month of July 2022 by an insurer that provides LTD coverage, does not meet the definition of “earned income” and must therefore be deducted from her DA as non-exempt unearned income.

PART D – RELEVANT LEGISLATION

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, 3, 6 and 7

Mental Health Act (MHA) Section 1

The relevant legislation is provided in the Appendix 1

PART E – SUMMARY OF FACTS

The Appellant is a recipient of DA.

According to the Ministry's RD:

- On August 8, 2022, the Appellant submitted a monthly report (the July Monthly Report), in which she declared \$2,521.46 in income from the LTD payment (the LTD Benefit), which is \$2,794.55 less \$273.09 deducted for federal taxes;
- On August 24, 2022, the Appellant visited her local Ministry office to discuss her September DA. The Appellant told the Ministry that she did not think that the LTD Benefit should have been deducted from her DA, and submitted documents explaining details of the LTD Benefit;
- On August 31, 2022, the Appellant again contacted the Ministry regarding her September DA, and provided information about a medical leave of absence she had taken in March 2022. The Appellant explained that she was eligible for LTD benefits for up to 2 years during her period of absence from work. The Ministry told the Appellant that the LTD Benefit did not meet the definition of "*earned income*", that the LTD Benefit payment she had received in July 2022 must be deducted as non-exempt unearned Income, and that as a result she was ineligible for DA in September 2022 because the total amount she had received in July was in excess of the amount of DA to which she was entitled for that month.

Additional evidence before the Ministry at reconsideration included:

- The Appellant's Request for Reconsideration (RFR), dated August 22, 2022, in which she provided some background information, including that she had not submitted monthly reports or collected any PWD benefits other than the transportation amount since early 2020 because she was working and "*was fit to work full-time*". After struggling with several traumatic events, she took a leave of absence from work in March 2022. The Appellant also said that she had applied for and received medical employment insurance (EI) in May 2022 and received only one payment "*as the claim was tagged on to the previous claim this same year, 2022*". The Appellant said she was asking for reconsideration because:
 - She had applied for work-related LTD benefits, but "*after waiting nearly 3 months for funding to be approved*" decided to reapply for the full amount of DA;
 - Upon reapplying, she learned the Ministry would have to review her request for DA. This was necessary because her DA had been inactive as she had asked that her monthly payments cease in 2020. She said that the Ministry had not told

her that if she had continued to submit monthly reports she would keep receiving monthly DA until she reached the annual exempt income amount;

- After the Ministry's review process, she received the full DA amount in July 2020, but at the same time her application for a LTD benefit was approved, so she also received the LTD Benefit in July 2022, which she claimed on her July Monthly Report;
- While she understands that she is not entitled to DA for September 2022 as her LTD Benefit is not exempt income, she *"feel(s) there is need to carefully reconsider this decision as an individual case"*; and,
- She thinks that the LTB Benefit should either be considered exempt income or be allowed to apply towards the Ministry's annual exemption of qualifying income amount;
- An undated six-page document titled *"To the Employee: 'Questions and Answers' about your Long Term Disability Coverage"*. The document includes questions and answers about what LTD coverage is, how one qualifies and applies for benefits, the benefit amount, how to make a claim, and other related information;
- The Appellant's July Monthly Report, received by the Ministry on August 8, 2022, showing the net amount of the LTD Benefit (\$2,521.46 after federal tax deductions) in the line *"All other income/money received"*;
- A one-page document titled *"Claimant's Explanation of Benefits"* and dated July 11, 2022, which indicates that the Appellant was entitled to an LTD Benefit in the amount of \$2,794.55, less \$273.09 deducted for federal tax (the Benefit Explanation Statement);
- A direct deposit advice stamped August 8, 2022, which says *"The amount \$2,521.46 will be deposited directly into your account ..."* (the Direct Deposit Advice);
- An undated four-page document titled *"LTD Facts"* explaining what LTD benefits are, how to make claims, and other related information; and,
- A one-page email from the Appellant to the Ministry, dated August 31, 2022, in which the Appellant provides information about her situation leading up to her reporting of the LTB Benefit on her July 2022 monthly report (as summarized above), adding *"I (am) greatly in need of assistance now, and because I am not working, as I am at the brink of bankruptcy"* and *"I would greatly appreciate the reconsideration of this decision as based on my situation and absolute need of assistance in order to maintain essential financial commitments and basic quality of life. Having this financial hardship only contributes in difficult to manage setbacks and*

further compromises my health and wellbeing while ultimately impacting my future ability to be ready and able to return to full-time employment."

Additional Information

In the Notice of Appeal (NOA) dated September 26, 2022 the Appellant said that she disagreed based on the facts outlined in her original reconsideration application, and provided sections of the EAPWDR which she said "*support(ed) (her) statement*":

- EMPWDR, Section 1(1) – Definition of "*unearned income*" (j) and (t);
- EAPWDR, Schedule B, Section 1 – Deduction and exemption rules (a)(xxix); and
- *Mental Health Act* (MHA) Section 1 – Definition of "*person with a mental health disorder*".

The Appellant also included copies of the Direct Deposit Advice referred to above.

On November 30, 2022, the Employment and Assistance Appeal Tribunal received a submission from the Appellant (the Appellant Submission). The Appellant Submission comprised a two-page brochure titled "*Traumatic Stress Injury and Concurrent Program (TSICP)*" which describes a 9 week inpatient program provided by a health care service provider that "*helps patients struggling with primary trauma or concurrent trauma or addiction*" (the TSICP Brochure).

Evidence Presented at the Hearing

The Ministry did not attend the hearing.

At the hearing, the Appellant said she was granted PWD status and began receiving a DA in December 2020, and that her disability is keeping her from working. She said that she needs assistance now because she is currently in a residential treatment facility (the Facility) and her entire LTD Benefit amount is required to cover fees at the Facility. As a result, she has no money to cover other things, such as prescription eyeglasses and prescription medication that is not covered by Pacific Blue Cross (PBC) under her extended health plan. The Appellant also said that she has also been searching for "*reliable, safe housing*" for after she leaves the Facility on January 26, 2023, and has made short-term arrangements to live with a friend for a few months while she looks for long-term rental accommodation.

Regarding the deduction and exemption rules in the net income calculation (EAPWDR Schedule B, Section 1), the Appellant said that she feels that the deduction rules are unfair. She argued that EAPWDR Schedule B, Section 1(a)(xxix) says that payments made by a health authority or a health authority contractor to someone who is a "person with a

mental disorder", as defined in the *Mental Health Act*, to support them in participating in a mental health or addictions rehabilitation program, are exempt from the calculation of income. The Appellant said that she thinks she clearly meets the definition of a person with a mental health disorder who is participating in such a program, and it is unfair that the LTD Benefit she receives is not exempt when it would have been exempt if the income was from a health authority. She also thought that it was unfair that other unearned income, specifically unearned income that is compensation paid under the *Workers Compensation Act*, is considered "qualifying income" under the annual exemption for qualifying income provisions of the legislation, while the compensation she receives from the LTD Benefit does not.

In response to a question from the Panel, the Appellant confirmed that she has been receiving the same monthly LTD Benefit gross and net amounts continuously since July 2022 (\$2,794.55 and \$2,521.46 respectively).

In response to another question from the Panel, the Appellant said that the PBC extended health benefit she has is "*from her union*", and includes eye exams but not eyeglasses, some prescription drugs she has been prescribed but not others.

The Panel asked the Appellant about her statement in the RFR regarding her possible eligibility for the annual exemption for qualifying income amount ("*It was not explained to me (by the Ministry that) if I had continued to submit my monthly reports yearly I would keep receiving my monthly benefits until I reached the annual exempt income amount.*"). The Appellant said that she has continued to receive a transportation allowance of \$52 per month every month since early 2020, including for every month since she appealed the Ministry's decision to disallow the DA for the month of September 2022, which is the subject of this appeal. She also said that there were several months between the month in which she stopped receiving DA in early 2020 and July 2022 where her total monthly income was less than the base amount for the annual exemption for qualifying income (\$1,250), and she has not asked the Ministry for a retroactive calculation of benefits under EAPWDR Schedule B, Section 3.

As the Ministry did not attend the hearing, the Panel was unable to ask it whether the Appellant might be retroactively eligible for the annual exemption for qualifying income, pursuant to EAPWDR Schedule B, Section 3

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.

No new evidence was included in the NOA.

The Panel finds that the new information in the Appellant Submission is not admissible as it is not reasonably required for a full and fair disclosure of all matters relating to the appeal. It is not reasonably required because the inpatient program described in the TSICP Brochure has no bearing on the Appellant's eligibility for DA in September 2022, which is the subject of her appeal.

New evidence presented by the Appellant at the hearing includes an explanation of her current and planned short-term living arrangements, her need to find appropriate long-term accommodation and her related financial challenges. In addition, the Appellant's verbal evidence at the hearing included her statement that she has continued to receive a transportation allowance since she first qualified for DA over two years ago. New information also included the fact that since she became eligible for DA, her monthly net earned income was occasionally under the annual exemption for qualifying income amount of \$1,250 per qualifying month, and that she had not asked the Ministry for a retroactive application of the related annual exemption.

The Panel admits all the verbal evidence presented by the Appellant at the hearing as it is reasonably required for a full and fair disclosure of all matters relating to the appeal. The Panel assigns full weight to all this evidence as no evidence was presented to suggest that any of it is inaccurate.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD, which determined that the Appellant was not entitled to DA for the month of September 2022, was reasonably supported by the evidence or was reasonable interpretation of the legislation in the Appellant's circumstances. In other words, was it reasonable for the Ministry to determine that the Appellant's LTD Benefit in the amount of \$2,521.46 does not meet the definition of "*earned income*" and must therefore be deducted from her DA because it is non-exempt unearned income?

Position of the Parties

The Appellant's position is that it is unfair for the Ministry to disallow her DA because the LTD Benefit should either qualify as an exemption from unearned income or the Ministry should make an exemption to its policy in her case, as she is in great need of assistance to maintain her essential financial commitments and basic quality of life, and she will be returning to work as soon as she is well enough to do so.

The Ministry's position is that money the Appellant receives from the LTD Benefit is not listed as a source of unearned income that may be exempted from the calculation of unearned income and the legislation does not allow for discretion when calculating net income and its impact on a client's DA amount.

Panel Decision

EAPDR Section 1(1) defines "unearned income" to include disability payments. The Panel finds that the LTD Benefit reasonably meets the definition of a disability payment.

EAPWDR Section 24 says that a DA payment for any calendar month cannot exceed the amount calculated under EAPWDR Schedule A. Schedule A says that a sole recipient with no dependent children is entitled to receive up to \$1,358.50 in DA per calendar month. As the Appellant is a sole recipient with no dependent children, she is entitled to receive a maximum DA up to this amount.

EAPWDR Schedule B says that all unearned income, except for specifically identified kinds of unearned income, must be deducted from a person's DA amount. Therefore, if non-exempt unearned income in a given month exceeds a person's DA amount, no DA may be paid. In this case, the unearned income (LTD income from a private insurer) is not a type of unearned income listed in the deductions or exemptions provided in Schedule B Sections 6 and 7 respectively.

There are no provisions in the legislation that would allow the Ministry to make any exceptions to the provisions set out in the legislation. Therefore, the Ministry does not

have the authority to consider the Appellant's circumstances "*as an individual case*" and consider making an exception, as suggested in her RFR.

As the amount of the LTB Benefit in the Appellant's case, after the allowable income tax deduction, is \$2,521.46 and therefore exceeds her maximum DA amount (\$1,385.50), the Panel finds that the Ministry reasonably determined that the Appellant is not entitled to DA for the month of September 2022.

Conclusion

Having considered all the evidence, the Panel finds the Ministry's RD, which determined that the Appellant was not entitled to DA for the month of September 2022, was 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 her appeal.

* * *

The Panel empathizes with the Appellant in this appeal.

The Appellant has argued that she was not told that she might have been eligible for the annual exemption for qualifying income in any qualifying months between the month in which she voluntarily stopped filing for DA in early 2020 and the month in which she received her first LTD Benefit in July 2022. While her eligibility for an annual exemption for qualifying income during this period was not the subject of this appeal, the Appellant has the opportunity to pursue her possible eligibility for this benefit with the Ministry.

SCHEDULE A - 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: ...

(j) ... disability payments ...

(t) any other financial awards or compensation ...

Limits on income

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

Amount of disability assistance

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

(a) the amount determined under Schedule A, minus

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

Reporting requirement

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

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

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

(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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

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 Family Unit Size	Column 2 Maximum Monthly Shelter
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; ...

(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 ...

(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.

Annual exemption — qualifying income

3 (1) In this section:

"**qualifying income**" means ...

(b) unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*; ...

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; ...

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

MENTAL HEALTH ACT

"person with a mental disorder" means a person who has a disorder of the mind that requires treatment and seriously impairs the person's ability

(a) to react appropriately to the person's environment, or

(b) to associate with others

APPEAL NUMBER 2022-0228

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)
2022/12/04

Print Name
Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)
2022/12/04