

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision (the “decision”) dated 3 November 2022, which determined that the appellant does not qualify for disability benefits due to excess income as per the Employment and Assistance for Persons with Disabilities Regulation, sections 1, 9 and 24, Schedule A, sections 2 and 4, and Schedule B sections 1, 2, 6 and 7.

Specifically, the ministry determined that the appellant submitted an income report for her November benefit month that included income from ICBC. The ministry determined that the funds were unearned income and were in excess of what was allowed under the regulations, which meant that the appellant was not eligible for disability benefits in November.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 3.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 2.01, 9 and 24.

Schedule A, sections 1, 2 and 4

Schedule B, sections 1, 3, 6, 7, 8 and 9

Part E – Summary of Facts**Evidence at the time of reconsideration**

As part of the application for reconsideration, the appellant submitted:

- 1) two ICBC Claims EFT (electronic funds transfer) Notifications confirming the payments of \$765.32 on September 11, 2022 and again the same amount on September 12, 2022;
- 2) a Monthly Report submitted to the ministry, dated October 5, 2022, which reported her income in the month of September as \$765.32 under “Net Employment Income” and \$765.32 under “All other income/money received”;
- 3) an e-mail from a lawyer to ICBC dated October 24, 2022 which states “PWD have put her benefits from them on hold subject to her completing an appeal with an explanation of this glitch”. It also states that the appellant “must prove to the satisfaction of the reviewing panel at PWD that both cheques were in fact for income loss benefits and not for any reimbursement” ...;
- 4) two emails from a Claims Specialist at ICBC dated October 24, 2022, which state “there has been a glitch in our system pertaining to recurring cheques”, and that “the 12-Sep-2022 cheque was sent early and was supposed to be issued on 7-Oct-2022”. The second email states “the two cheques in question were for income loss replacement” for the appellant and offers an apology “for ICBC’s error”.

The appellant adds that this was a “simple error on my adjusters part at icbc” and that was earned income and “IT WAS NOT UNEARNED INCOME THIS WAS A HUGE MISTAKE I EARNED THIS INCOME”.

According to the Ministry’s decision, which is not disputed by the appellant, the following is a chronology of events:

The appellant submits a monthly report of her September 2022 income on October 5, 2022 for her November 2022 benefit month.

The ministry reviews the monthly report on October 19, 2022.

The ministry determined on October 20, 2022 that the appellant was ineligible for November benefits due to income in excess of that allowed under Section 9 of the EAPDWR and denies the appellant benefits for November 2022.

The appellant initiated a Request for Reconsideration on October 24, 2022.

The ministry completed its review of the Request for Reconsideration on November 3, 2022.

In the Reconsideration decision, the ministry found that:

- 1) The appellant's income from ICBC is not considered earned income "because it was not money you received in exchange for work or a provision of service." The ministry adds that it does not matter that the "ICBC payments are for income loss replacement, it is considered unearned income as set out in Section 1(d) of the EAPWDR and is not exempt from disability".
- 2) The income reported in September of (2 x \$765.32) \$1,530.64 "exceeds the ministry's rate of assistance of \$1358.50, [and] you are not eligible for disability assistance in accordance with Section 9(2)" of the EAPWDR.

The appellant applied for a Notice of Appeal to the EAAT on November 18, 2022, stating that ICBC made an error, that she had sent several letters and proof from the ICBC adjuster to support her claim, and that she had also included "part 8 showing my wages".

Additional information

During the hearing, the appellant discussed additional information about her situation.

The panel determined that the additional information provided by the appellant supported her argument and found that it would be admitted.

Testimony at the hearing

The appellant explained how she had been receiving disability assistance since 2012 and income from ICBC since 2018, and she had never encountered any issues with past payments until ICBC changed their payment system. She added that the loss of her November monthly benefit has really impacted her life. She is behind on hydro payments and rent and is concerned about getting evicted from her home. The added stress of the situation is taking a toll on her mental and physical health.

She states that this was an error on ICBC's part in providing two monthly payments at once, and she has "been honest about declaring everything", and this has cost her one month's benefit payment.

She has provided the ministry with “numerous letters saying there was an error” on ICBC’s part, and is frustrated by the lack of response by anyone at the ministry. She states that she located someone at the ministry that could help her, but she later was informed that assistance would not be offered.

The ministry did not attend the hearing and was not able to clarify to the panel issues related to the appellant’s situation. As a result, the panel relied on testimony from the appellant and the appellant’s submissions.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was ineligible for disability benefits was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant's payments from ICBC in September 2023 make her ineligible for November 2023 disability benefits?

Ministry position

The ministry found that the appellant's ICBC payments were "unearned income" according to Section 1 of the EAPWDR. The ministry stated that "'earned income' means money received in exchange for work or a provision of service; and 'unearned income' means any income that is not earned income" ... including insurance benefits, "except insurance paid as compensation for a destroyed asset". The ministry determined that the ICBC payments were "unearned income" and would be deducted from any benefit payments.

The ministry determined that the appellant's "net income exceeds the ministry' rate of assistance..." and that she was "not eligible for disability assistance in accordance with Section 9(2)" of the EAPWDR.

Appellant's position

The appellant states "I earned this income", and that stating this was "unearned income" was "a huge mistake" on the part of ICBC, and this had been corrected by the ICBC Claims Adjuster who states the payments were for "income loss replacement".

The appellant states that her monthly payment from ICBC was mistakenly duplicated due to an error by ICBC – an error which was confirmed by ICBC.

The appellant received her usual monthly payment from ICBC, which she reported on her monthly income report. She also received an early payment for the following month in error, which she also reported on her monthly income report.

Panel's reasons

Section 1 of the EAPWDR states that "earned income" means (a) "any money or value received in exchange for work or the provision of a service". It also defines "unearned income" as "(d) insurance benefits, except insurance paid as compensation for a destroyed asset".

The panel finds that the ministry acted reasonably in determining the income received by the appellant from ICBC was an “insurance benefit”, and therefore “unearned income” as stated in the EAPWDR. This finding is supported by the EFT payment notifications from ICBC which confirm the source of this income.

Section 9(2) of the EAPWDR states that a family unit is not eligible for 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.

Section 24 of the EAPWDR provides that the amount of disability assistance is the amount determined under Schedule A minus the family unit’s net income determined under Schedule B.

In the case of the appellant, she is a “family unit” of one, and Schedule A of the EAPWDR states she is eligible for monthly benefits of \$1,358.50. Schedule A provides a support allowance of \$983.50 and a shelter allowance of up to \$375 for a total of \$1,358.50.

The appellant declared income of \$1,530.64 in September 2022, in relation to her November benefit month. As noted above, the panel has found that this amount was reasonably found by the ministry to be “unearned income”.

Section 1 of Schedule B provides a list of exemptions from net income. The panel reviewed these deductions and exemptions and found that none applied.

Section 6 of Schedule B provides for the deduction of “any income tax deducted at source from employment insurance benefits” and “essential operating costs of renting self-contained units”. Section 7 of Schedule B provides for a list of exemptions from unearned income. The panel found that none of these exemptions apply.

In this case, the panel finds that the ministry acted reasonably in concluding that the monthly income reported by the appellant exceeded the amount of disability assistance.

The panel finds that, in this case, the ministry applied the relevant regulations and legislation reasonably. The ministry’s reconsideration decision was reasonably supported by the evidence. The panel confirms the ministry’s decision. The appellant is not successful in the appeal.

The panel empathizes with the appellant, and given the history of the matter can fully understand the confusion with the decision. The panel is hopeful that a ministry representative can contact the appellant to explain the situation further.

Schedule of Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

1 (1) In this regulation:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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

...

- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;

...

Limits on income

9 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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.

Schedule A

Disability Assistance Rates

Monthly support allowance

(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

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

(2)The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(a)the minimum set out in the following table for the family unit, and

(b)the lesser of

(i)the family unit's actual shelter costs, and

(ii)the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

Schedule B

Net Income Calculation

Deduction and exemption rules

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

(a)the following are exempt from income:

(i)any income earned by a dependent child attending school on a full-time basis;

...

(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,

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 (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 $(A-B) \times C$, 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*;

(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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

APPEAL NUMBER 2022-0286

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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2022 November 30

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2022 December 5

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2022 December 7