

Part C – Decision Under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) reconsideration decision, dated January 25, 2023 (the “**Reconsideration Decision**”). The Ministry determined that the Appellant was ineligible for disability assistance for February 2023 because the Employment Insurance income she received in December 2022, which is not exempt, exceeded the Ministry’s monthly rate of assistance.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – section 3
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 1, 2(0.1), 9, and 24
- Schedule A of the *Regulation* (“**Schedule A**”) – sections 1, 2, and 4
- Schedule B of the *Regulation* (“**Schedule B**”) – sections 1, 2, 6, 7, 8 and 9

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

The Appellant is the sole recipient of disability assistance (“**DA**”).

A Monthly Report dated December 29, 2022, where the Appellant reported \$1,589.27 in Employment Insurance income (the “**EI Income**”). The Appellant selected “Yes” to the question, “*Are you still in need of assistance?*”

A Monthly Report dated January 4, 2023, where the Appellant reported \$1,575.00 in EI Income. The Appellant selected “Yes” to the question, “*Are you still in need of assistance?*”

On January 5, 2023, the Ministry advised the Appellant that she was ineligible for February 2023 DA as the EI Income of \$1,575.00 that she received in December 2022 exceeded her \$1,385.50 rate of DA (the “**Decision**”).

On January 11, 2023, the Appellant applied for a reconsideration of the Decision (the “**Reconsideration Request**”). In support of the Reconsideration Request, the Appellant advised:

“I was not properly informed on how EI could effect my disability was told it wouldnt. Received a lump sum payment of 1,575 this payment was for multiple weeks worth of payments and should be calculated as such not one payment as it is not my fault I had to wait so long to be approved for EI. I also should have been informed properly on how EI could of affected my disability and been given a choice on whether or not I wanted to apply for EI...”

In further support of the Reconsideration Request, the Appellant resubmitted her Monthly Reports for December 2022 and January 2023 and provided screenshots from her Service Canada account reflecting her lumpsum EI Income payment for “*sickness benefits*” which was broken down as:

- \$0 for the week of October 9, 2022 (waiting period);
- \$175 for the week of October 16, 2022;
- \$175 for the week of October 23, 2022;
- \$175 for the week of October 30, 2022;
- \$175 for the week of November 6, 2022;
- \$175 for the week of November 13, 2022;
- \$175 for the week of November 20, 2022;
- \$175 for week starting November 27, 2022;

- \$175 for the week of December 4, 2022;
- \$175 for the week of December 11, 2022; and
- \$175 for the week of December 25, 2022.

On January 25, 2023, the Ministry issued the Reconsideration Decision and summarized its denial of the Reconsideration Request as follows:

"The EI income you receive is considered unearned income as set out in Section 1(g) of the EAPWD Regulation and is not exempt from disability assistance because your claim is for sick benefits and is not money received for maternity, parental or caring for a critically ill child. The only permitted deduction is for taxes. The ministry calculates your net income from the EI you received in December as \$1575.

For recipients of disability assistance, regardless of the period for which the income is payable, the income you receive in a month is to be declared by the 5th of the following month and affects disability assistance the following month (i.e. December income is declared by January 5th and affects February disability assistance).

The rate of disability assistance for a sole recipient with no dependents under Schedule A is \$983.50 support and \$375 shelter for a total of \$1358.50.

Therefore, as your \$1575 net income from December exceeds the \$1358.50 rate of assistance, you are not eligible for February disability assistance in accordance with Section 9(2) of the EAPWD Regulation."

The Ministry explained that the EI Income received in December 2022, which was declared by January 5, 2023, would affect the Appellant's February 2023 DA.

(b) The Appeal

On January 27, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**").

In advance of the Appeal hearing, the Appellant submitted a personal statement:

"...When I was told that I had to apply for EII called the Ministry and I asked the social worker if applying for EI wouldn't anyway affect my disability check I was informed that no it would not so I went ahead and I applied for EI and was approved for medical EI until January 7 a couple weeks later around the end of December I got a lump sum payment of \$1575. I then claimed the money as you were supposed to do and thought nothing of it until I looked up my self-serve account to see you when check issue date was and I realized I was only getting \$52, I called and I asked what was wrong and was informed that you get deducted dollar for dollar I do not think that it's fair that I am

getting penalized if I had been informed the proper information by the social worker that I originally talked to I would've managed my money in a much better way but because I was misinformed now I can't pay my rent..."

The Appellant also provided a screenshot from her Service Canada account which summarized her receipt of eleven (11) sickness benefit EI Income payments in which the last payment was processed on December 25, 2022.

In addition, the Appellant provided Service Canada's December 14, 2022 decision on Employment Insurance. In denying the Appellant's request, Service Canada explained:

"... We are not able to establish a claim for you because you did not work the required number of hours to qualify for Employment Insurance benefits..."

... We cannot pay you the Employment Insurance benefits you requested. You had 602 hours of insurable employment between October 10, 2021 and October 8, 2022.

However, you needed 700 hours of insurable employment to qualify for benefits..."

The Appellant also provided a note from her doctor, dated November 15, 2022:

"... This lady has been unable to work due to illness since October 6th. She (sic) will likely remain off work for several months due to illness..."

The Appellant procured the doctor's note because Service Canada's advised that she could receive sickness benefits if she provided a medical certificate.

(c) Appeal Hearing, Oral Submissions and Late Evidence

The Appellant's Appeal hearing was held on February 17, 2023, via teleconference.

During oral submissions, the Appellant referred the Panel to the evidence submitted with the Appeal Notice. In addition, the Appellant advised:

- that she has been a recipient of DA for 10+ years;
- that in October, November and December 2022, she received DA in the amount of \$1,358.50;
- in January 2023, her DA was reduced to \$52.00 as a result of the EI Income; and
- in February 2023, her DA was reduced to \$350.00 as a result of the EI Income.

In explaining the circumstances that lead her to initial application for the EI Income, the Appellant stated that, on October 24, 2022, she received a message from the Ministry in her "Self-Serve Account". According to the Ministry's message, and because of her Monthly Report, she was required to obtain a Record of Employment and apply for the EI

Income. In the event the Appellant had questions, the Appellant was encouraged to contact the Ministry for clarification.

On either October 24 or 25, 2022, the Appellant contacted the Ministry to clarify if applying for the EI Income would affect her DA. According to the Appellant, the Ministry's representative advised, "... no, you'll be fine..." The Appellant took this to mean that her DA would not be affected if she received the EI Income; as a result, she did not ask the Ministry any follow up questions.

The Panel understand that the Appellant will continue to qualify for DA once she ceases to receive the EI Income which was provided as a sickness benefit.

In response, the Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. Generally, the Ministry did not dispute the Appellant's recollection of events, particularly as they relate to the Appellant's conversation with the Ministry on October 24 or 25, 2022. That said, the Ministry rationalized that, "... no, you'll be fine..." could mean that the Appellant's disability status would not be affected and nothing more. Regardless, the Ministry explained that the applicable legislation requires the Appellant to apply for the EI Income and, if received, that the EI Income is deducted from the DA on a dollar-for-dollar basis. While some confusion may have arisen from the Appellant's call to the Ministry in late October 2022, the Ministry explained that the Appellant would have likely been informed of her duty to apply for the EI Income during her original DA intake some 10+ years ago. In closing, the Ministry submitted that it was constrained by the legislation.

The Ministry had no objection to the Appellant's oral submissions and additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry denied the Appellant DA for February 2023 because the EI Income she received in December 2022, which is not exempt, exceeded the Ministry's monthly rate of assistance.

Appellant's Position

The Appellant argues that her DA should not be reduced because the Ministry told her that it would not be affected if she applied for the EI Income. Alternatively, the Appellant argues that the EI Income should not be treated as a lump sum payment; rather, it should be backdated and applied to the periods of time for which it was respectively granted.

Ministry's Position

The Ministry maintains that the Appellant is ineligible for the DA for the reasons because the EI Income is deducted dollar-for-dollar.

Panel Decision

Generally speaking, the Panel notes that the *Act, Regulation* and Schedules require an individual to pursue, accept, and use all other sources of income to support themselves before DA may be issued.

Pursuant to sections 9 and 24 of the *Regulation*, to be eligible for DA, a family unit's net income must not equal or exceed the amount of DA that the family unit would otherwise be entitled to. To determine a family unit's DA entitlement, one must look to Schedules A and B.

Recipients of disability assistance are required to submit a Monthly Reporting Form when they receive earned income or other unearned income.

Pursuant to sections 2 and 4 of Schedule A, the maximum amount of monthly support that can be received by a sole recipient of DA is \$983.50, while the maximum amount of shelter support is \$375.00. In total, a sole recipient of DA can receive up to \$1,358.50 in monthly DA.

The *Regulation* and sections 1 and 2 of Schedule B indicate that income can be earned, unearned, or exempt (not considered income). In calculating income, EI Income issued by Service Canada is unearned income that is not exempted (other than permitted deductions). Conversely, EI Income issued as a result of maternity benefits, parental benefits, or special benefits for Parents of Critically Ill Children is exempted unearned income.

Section 9 of Schedule B provides that eligibility for DA is determined based on all available income and applicable exemptions. Exemptions on income apply only in the calendar month in which the income is **actually received** regardless of (i) the date the income is

payable; (ii) the period for which the income is payable; (iii) the date the income is reported to the Minister; and (iv) the date the Minister receives notice of the income.

On review of the evidence and oral submissions provided, the Panel finds that the Appellant is entitled to DA; indeed, the Ministry did not dispute this. However, the Panel further finds that, despite the Ministry's comments regarding the Appellant's DA status in late October 2022, the Ministry denied the Appellant's February 2023 DA in a manner required by the *Act*, the *Regulation* and Schedules A and B.

For clarity, the Appellant was determined to have actually received the EI Income in the amount of \$1,575.00 in December 2022. As a result, the Ministry was required to reduce the Appellant's DA on a dollar-for-dollar basis on account of the EI Income. As the Appellant advised the Ministry of the EI Income on January 5, 2023, the Ministry was correct to apply same against the Appellant's February 2023 DA calculation.

The Panel further notes that the circumstances giving rise to the Appellant's confusion regarding her pursuit of the EI Income and her understanding of the implications for her DA is regrettable and may have been fostered by the Ministry's vague statements in late October 2022. The Panel finds that the confusion created by the Ministry could have been avoided had it responded to the Appellant's more clearly; for example, by defining what "... *no, you'll be fine...*" meant in the circumstances. Moving forward, the Ministry can reduce such confusion by advising recipients of DA that the receipt of EI Income may affect DA.

In sum, the Panel finds that the Ministry's treatment of the Appellant's EI Income was constrained by the applicable legislation in that it could not treat the EI Income as anything other than unexempt unearned income which was actually received in December 2022.

Conclusion

The Panel finds that the Ministry's decision to reduce the Appellant's DA for February 2023 was a reasonable application of the legislation in the circumstances.

Legislation

Employment and Assistance for Persons with Disabilities Act

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within

the time specified by regulation, must

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

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of

the information provided in it is affirmed by the signature of each recipient.

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:

- ...
- (g) employment insurance;

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.

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);

() 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;

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

(ii) change in the employment and educational circumstances of recipients in the family unit;

(iii) change in family unit membership or the marital status of a recipient;

(iv) any warrants as described in section 14.2 (1) of the Act;

(v) 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.

SCHEDULE A

Disability Assistance Rates

(*section 24 (a)*)

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 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*.

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children" , in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"maximum adjustment" repealed; [B.C. Reg. 34/2017]

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

- (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
 - (a.1) Repealed [B.C. Reg. 193/2017]
 - (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 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 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

- (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	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$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;

...

(lxviii) a voted support payment.

(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.

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:

...

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

Application of deductions and exemptions

9 (1)The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a)the date the income is payable;
- (b)the period for which the income is payable;
- (c)the date the income is reported to the minister;
- (d)the date the minister receives notice of the income.

(2)Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

2023-0032

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/02/17

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2023/02/17

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2023/02/17