

**Part C – Decision Under Appeal**

The Appellant is appealing a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated May 18, 2022, but received August 11, 2023 (the “Reconsideration Decision”) that reconsiders an earlier decision at the request of the Appellant.

The Appellant is a recipient of income assistance in British Columbia and a permanent disability benefit from another province arising from being a victim of crime. The Reconsideration Decision was that payment of those benefits are to be deducted from the Appellant’s income assistance in British Columbia as unearned income.

**Part D – Relevant Legislation**

*Employment and Assistance Act* (the “Act”):

Section 3 [Act does not apply to persons with disabilities]

Section 21(1) [Commencing an appeal]

Section 22 (4) [Panels of the tribunal to conduct appeals]

Section 24 [Decision of panel]

*Employment and Assistance Regulation* (the “Regulation”):

Section 1(1)(s) and (t) [Definitions – “unearned income”]

Section 28 [Amount of income assistance]

**Schedule A** [Income Assistance Rate]

Section 1(1) [Maximum amount of income assistance before deduction of net income]

Section 2 (part) [Monthly support allowance]

Section 4 (part) [Monthly shelter allowance]

**Schedule B** [ Net Income Calculation]

Section 1 [Deduction and exemption rules]

(a)(xxxvii)

(d)

Section 6 [Deductions from unearned income]

Section 7(1)(c) [Exemptions — unearned income]

(See attached Appendix for text of the above)

**Part E – Summary of Facts**

The following is a summary of the facts, as found by the panel, from the evidence presented.

On February 10, 2021, the Ministry opened a file on the Appellant's application for income assistance [date as stated in the Reconsideration Decision].

On February 28, 2022:

- The ministry received a "Statement of Amounts Paid" faxed from a victim compensation organization in another province (the "VCO") confirming the following:
  - The Appellant receives "\$538.84 per month [the "VCO criminal injury payment"] as a pension for permanent disability benefits from [the VCO]".
  - "This pension is for [the Appellant's] lifetime to compensate [the Appellant] for a permanent disability of criminal act injuries" incurred when the Appellant 46 years old (the "VCO criminal injury award").

On March 7, 2022, the Appellant told the ministry that the full amount of income assistance had not been received.

On March 10, 2022, the Ministry confirmed that the amount sent was correct after deduction. It cited the *Regulation* to define the criminal injury compensation award as unearned income. It then cited policy for considering only the first monthly *VCO criminal injury payment* as exempt from deduction from BC income assistance payments. The Ministry stated that:

A criminal injury compensation award is that term is used [sic] in the Employment and Assistance Regulations to refer to an award of compensation under the Criminal Injury Compensation Act of BC. The money you receive is not paid under that Act. The funds you receive are considered unearned income and fall under the category of "any other financial awards or compensation." Ministry policy states that recurring financial awards are considered unearned income and must be considered when calculating eligibility for assistance. Since the money is recurring it would be exempt once only up to your asset limit, and subsequent payments of \$538.81 would not.

On April 19, 2022, the Appellant asserted that the *VCO criminal injury award* and monthly payments (versus lump sum payments) were exempt and requested reconsideration. The Request for Reconsideration included that assertion as follows:

*"Your regulations under the BC Criminal Injury Compensation Act, Section 3(1)a and 3(1)b – (1) state that compensation awards can be in the form of periodic payments and*

*of the same amount. That being said the money I have been awarded from [the VCO] ... would fall under the BC Criminal Injury Compensation Act.*

*I was denied receiving my monthly checks from the Ministry of Social Development because it was stated that the money I have been awarded from [the VCO in another province] ... doesn't fall under the B.C. Criminal Injury Compensation Act due to my award not being a lump sum when it clearly states that an award under the BC Act can be made in payments of the same amount periodically. So my [VCO criminal injury] award ... does fall under the B.C. Act therefore I am eligible for benefits."*

On May 18, 2022, the Ministry completed the Reconsideration Decision stating that the *VCO criminal injury award* falls under the definition of "unearned income" in *Regulation* section 1(1)(t) as from "any other financial awards or compensation".

The Reconsideration Decision addressed exemption for the *VCO criminal injury award* but determined that it did not fit either of 2 criteria to be exempt, stating as follows:

... the only exemption for this type of income is noted in section (1)(xxxvii) of Schedule B which states to be exempt income the money must be paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for nonpecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age. As your pension is not paid under the Criminal Injury Compensation Act of B.C. and you were not under 19 years of age on [the date of the event] this exemption does not apply to you.

The Ministry stated that no other exemptions "of this type" applied and that it deducted the *VCO criminal injury payments* from the income assistance (calculated under Schedule A) as required by the *Regulation* at section 28.

On June 10, 2022, the Appellant applied for designation of a person with disabilities (PWD).

On July 1, 2022, the Appellant was designated PWD status.

On August 11, 2023 (over 15 months later) the Appellant received notice of the Reconsideration Decision being issued.

On August 17, 2023, this Tribunal received the Appellant's Notice of Appeal by telephone submission.

### **Appellant Submissions**

The Appellant did not appear at the hearing. The Notice of Appeal did not include any statement in the "Reasons for Appeal" section of the form completed from the verbal application made over the telephone. No separate written submissions were provided.

### **Ministry Submissions**

The Ministry representative reiterated the Reconsideration Decision reasons and described the calculation of deductions.

The representative advised that the Appellant applied for PWD in June 2022 which was granted as of July 1, 2022.

### **Admissibility of New Evidence**

The Ministry representative made statements as part of the submissions. Under section 22(4) of the *Employment and Assistance Act* the panel admits those statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision**

This matter is unusual as it is an appeal initiated on August 17, 2023 from a May 18, 2022 Reconsideration Decision. However, the panel finds that the appeal was commenced within the 7-day deadline (per the *Act* s.21(1)) based upon the Appellant’s declaration of August 11, 2023 as the date of receipt of the decision. The Ministry did not object, nor did it contest that date.

The panel also notes that the Appellant received PWD designation July 1, 2022, and that date has bearing as an end date for calculations under this decision. This is because up to that date the Appellant was a recipient of income assistance under the *Act* and *Regulation*, but that would end upon PWD designation as required by section 3 of the *Act* which states:

**Act does not apply to persons with disabilities**

- 3** A family unit that includes a person with disabilities is not eligible for income assistance or hardship assistance under this Act.

In the Reconsideration Decision the *VCO criminal injury payments* were considered as “unearned income” arising from “financial awards or compensation”, based upon the *Regulation* section 1 definition as follows:

**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:

...

(t) any other financial awards or compensation

...

The Reconsideration Decision cited that under *Regulation* section 28 a person's income (calculated under *Regulation* Schedule B), must be deducted from their income assistance (calculated under *Regulation* Schedule A).

Under *Regulation* Schedule B certain types of income are exempt from deduction from income assistance payments. The Reconsideration Decision stated that the *VCO criminal injury award* was not exempt under the only provision that applied. This was *Regulation* Schedule B at section 1(a)(xxxvii) which says:

**Deduction and exemption rules**

- 1** When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

(a) the following are exempt from income:

(xxxvii) 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;

The Reconsideration Decision was that the Appellant did not satisfy either of the 2 criteria that are needed to apply that exemption. These were that the *VCO criminal injury award* was not made under the *Criminal Injury Compensation Act* of BC and that the Appellant was not under 19 years of age at the time of the criminal event.

Even if the Appellant met that age requirement the panel is not aware of, nor was it directed to, any legislation in this province that would cause the *VCO criminal injury award* to be considered as if made under the *Criminal Injury Compensation Act* of BC.

The panel finds that the Ministry reasonably applied the evidence and *Regulation* Schedule B at section 1(a)(xxxvii) in deciding that the Appellant did not satisfy the criteria.

After the Reconsideration Decision findings above, the Ministry made another finding. This was that “there are no other exemptions for this type of income under Schedule B” of the *Regulation*. The panel finds that that statement reflects a failure to consider the application of section 7(1)(c) of the Schedule B that is applicable based upon *Regulation* Schedule B section 1(d). These sections state:

#### **Deduction and exemption rules**

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

#### **Exemptions — unearned income**

7...

(1) The following unearned income is exempt:

(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 11 [*asset limits*] of this regulation;

That failure to recognize and address Schedule B section 7(1)(c) is unexplained and fails to provide reasons that are justified, intelligible and transparent. Those words are part of the principle that an administrative decision maker’s reasons must meaningfully account for

the central issues and concerns raised by the parties. This was explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 127.

As discussed in that case, the panel is able to consider evidence before the decision maker, submissions of parties, publicly available policies or guidelines of the Ministry, and its past decisions as explaining apparent shortcomings in the reasoning process. (See *Vavilov* at para. 94.) This however is not an invitation for this panel “to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the [decision maker] might have been thinking.” (See *Vavilov* at para. 97 citing and quoting from subsidiary court decisions.)

Applying the principles above, some guidance may be taken from the Ministry’s March 10, 2022 decision, preceding the Reconsideration Decision. (In the Reconsideration Decision the Ministry quoted the Appellant’s submission appealing the March 10, 2022 decision that resulted in the Reconsideration Decision being appealed here.) In that original decision confirming the deduction, the Ministry asserted that the undefined phrase “criminal injury compensation award” is used to only refer to exempt awards of compensation under the *Criminal Injury Compensation Act* of BC and thus it did not apply to the *VCO criminal injury* payments from another province. The section being interpreted was not explained nor was the basis of the limited interpretation.

That phrase only appears in Schedule B section 7(1)(c) and is unique because the shortened phrase “criminal injury compensation” appears without being confined to the *Criminal Injury Compensation Act* of BC. The Ministry may have been intending to refer to *Regulation* Schedule B at section 1(a)(xxxvii) and not to section 7(1)(c) but that provides no explanation for the unique match, why that provision in section 7(1)(c) was not addressed, and why the *VCO criminal injury award* was not considered as an “other award” under section 7(1)(c). The panel is unable to determine the basis for the Ministry’s statement and interpretation in the circumstances, nor why *Regulation* Schedule B at section 7(c) was not addressed.

The March 10, 2022 decision went on (in the same paragraph where it used the unique phrase “criminal injury compensation award”) to cite policy directing that the Appellant’s *VCO criminal injury award* was to have only the first payment exempted from deduction because “recurring financial awards are considered unearned income and ... exempt once only up to [the Appellant’s] asset limit ...”. It said:

Ministry policy states that recurring financial awards are considered unearned income and must be considered when calculating eligibility for assistance. Since the money is recurring it would be exempt once only up to your asset limit, and subsequent payments ... would not.



The Appellant contested that issue in the Request for Reconsideration that led to that March decision, and specifically contested the different treatment of the *VCO criminal injury award* because it was paid monthly rather than in a lump sum. The March 10, 2022 decision did not address it beyond that reference to policy without quotation or explanation, which is insufficient to explain the Ministry's reasons. The Reconsideration Decision provided less - the issue and the one-time exemption disappeared without explanation. While the Reconsideration Decision quoted the Appellant's contesting of the issue under the heading "Our records show;" it did not address the policy or the issue of lump sum versus periodic payments and one-time exemptions.

The panel sees no explanation in the Appeal Record and finds no basis in the *Act* or *Regulation* for that interpretation. Was the Ministry applying the word "award" to the originating grant of the award as a one-time event but then also applying it as if it is synonymous with the word "payment" such that only the first payment is an "award"? The Reconsideration Decision is not sufficiently justified, intelligible and transparent to allow the panel to determine whether the legislation is being applied reasonably.

Under section 24(2) of the *Act* "if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision" then the panel must confirm the Reconsideration Decision. The panel is unable to do so in this case.

Accordingly, section 24(2)(b) of the *Act* applies, which states that the panel "must" if "otherwise, rescind the decision". Also, in accordance with that subsection the matter must be returned back to the Minister if this decision cannot be implemented without further decision as to the amount payable. That is required here for calculation of any adjustment for amounts exceeding the family unit's assets arising from the Appellant's *VOC* criminal injury award.

### **Conclusion**

The panel finds that the Ministry's Reconsideration Decision was:

1. Not reasonably supported by the evidence, and
2. Not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel rescinds the Reconsideration Decision, and the matter is returned to the Minister because the decision cannot be implemented without further decision as to the amount payable.

**Appendix – Relevant Legislation**

***EMPLOYMENT AND ASSISTANCE ACT***

[SBC 2002] CHAPTER 40

**Act does not apply to persons with disabilities**

**3** A family unit that includes a person with disabilities is not eligible for income assistance or hardship assistance under this Act.

**Commencing an appeal**

**21** (1) A person who has a right of appeal to the tribunal must commence the appeal in the prescribed manner within 7 business days of the date the person receives notice of the decision being appealed.

(2) If a person who has a right of appeal to the tribunal does not commence an appeal within the period specified under subsection (1),

(a) the person is deemed to have accepted the minister's decision, and

(b) the minister's decision is final and conclusive and is not open to review in a court on any ground or to appeal to the tribunal.

**Panels of the tribunal to conduct appeals**

**22 ...**

(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Decision of panel**

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

***Employment and Assistance 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:

- (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; 4 9 of 66
- (t) any other financial awards or compensation;

**Amount of income assistance**

**28** Income 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**

**Income Assistance Rates**

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

**1** (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in [section 28](#) (a) [*amount of income 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) but subject to subsection (3), income 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](#).

(3) If

- (a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,
- (b) the family unit is found eligible for income assistance, and
- (c) support is provided for the parenting dependent child or that individual's dependent child, or for both, under [section 8 \(2\)](#) or [93 \(1\)](#) (g) (ii) of the [Child, Family and Community Service Act](#),

the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

**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);

**"warrant"** has the meaning of a warrant in section 15.2 [*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
  - (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 of Support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$560.00

...

- (2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding month,

(ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and

(iii) the total amount of the supplements, if any, provided to or for the family unit under [section 61](#) [*supplement for delayed, suspended or cancelled family bonus*] or 61.1 [*supplement for delayed, suspended or cancelled Canada child benefit*] of this regulation for the current calendar month.

(2.1) If the amount calculated under subsection (2) is less than zero, it is deemed to be zero for the purposes of this section.

(3) In calculating the adjustment under subsection (2), an amount that, under the [Income Tax Act \(British Columbia\)](#) or the [Income Tax Act \(Canada\)](#), is deducted or set off from the family bonus or the Canada child benefit must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus or the Canada child benefit for the preceding calendar month, or

(b) accept the family bonus or the Canada child benefit for the preceding calendar month

in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the [Income Tax Act \(Canada\)](#).

(5) If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and

(b) reached that age while attending secondary school,

the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reaches the age of 19 years, and

(d) the date the person stops attending secondary school.

(6) For the purposes of this section, if the family unit includes a deemed dependent child, the BC child adjustment amount applies in respect of the deemed dependent child as if the deemed dependent child was a dependent child.

*Prorating of support allowance*

3 In the calendar month that includes the income assistance application date, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

**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 a warrant in section 15.2 *[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 15.2 \(1\)](#) 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 28 (b) *[amount of income assistance]* of this regulation,

(a) the following are exempt from income:

(xxxvii) 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;

...

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

### **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:

(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 11 [*asset limits*] of this regulation;

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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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/09/13

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/09/13

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/09/13