

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated August 24, 2023, in which the ministry determined that a monthly payment from *Indemnisation des Victimes D’actes Criminels* (“IVAC”) is unearned income that must be deducted from the appellant’s disability assistance pursuant to the Employment and Assistance for Persons with Disabilities Regulation because it is not exempt under Schedule B.

### **Part D – Relevant Legislation**

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Regulation – (“the Regulation”) - sections 1, 24, 29, and Schedules A and B

*The full text is available in the Schedule after the decision.*

## Part E – Summary of Facts

The evidence the ministry had at the reconsideration consisted of:

**1.** Information from the ministry record indicating that the appellant applied for income assistance in April 2023, and received the *Persons with Disabilities* designation on June 9, 2023. The appellant is a single recipient of disability assistance; the rate for her family unit is \$1,483.50 per month.

The ministry noted that the appellant declared income of \$421.68 per month from the Workers' Compensation Board ("WCB") in her application for assistance. The ministry deducted this payment from the monthly assistance cheque.

On June 20, 2023, the appellant contacted the ministry to inquire about the deduction. The appellant said that the monthly payment of \$421.68 is not from WCB; "it is a victim indemnity payment" from IVAC. On June 20, 2023, the appellant submitted a letter from IVAC which confirmed "total temporary disability benefits" of \$421.68.

On June 26, 2023, the ministry advised the appellant by phone that the "income you receive from WCB is not exempt because it is not for wage loss" under codes 151 (*temporary total disability*) or 152 (*temporary partial disability*) of the *Workers' Compensation Act*.

On July 4, 2023, the appellant advised the ministry that she has an earning exemption of \$15,000 and the income she receives "from WCB" should not be deducted from her disability assistance. The ministry explained that the annual earnings exemption only applies to employment income.

On July 10, 2023, the appellant requested a reconsideration of the decision to deduct the money she receives from IVAC. On August 24, 2023, the ministry completed its review and continued to deduct the payment from IVAC as unearned income that is not exempt under the Regulation.

**2.** A *Request for Reconsideration* signed by the appellant on August 3, 2023, in which she states that the ministry "stole from me \$421.68" for several months.

**3.** A statement from IVAC dated May 30, 2023, indicating that:

- The appellant is a victim of crime.
- The appellant receives “total temporary disability benefits” of \$421.68 per month beginning in 2005.
- The appellant receives a “monthly indemnity for permanent disability.” The compensation will be paid to her for life and is indexed on January 1 of each year.

**4.** An *Application for Assistance* signed by the appellant on April 18, 2023, in which she states that she is not able to work due to her mental health. The appellant explained that she was “criminally attacked years ago” and receives \$421.68 “indemnity benefit.”

*Additional information*

Subsequent to the reconsideration decision, the appellant submitted a *Notice of Appeal* with a hand-written submission dated October 18, 2023, which the panel accepts as argument. The appellant then submitted two additional documents to the Tribunal:

**A.** A 1-page *Statement of amounts paid* from IVAC, dated November 27, 2023, and received at the Tribunal on November 28, 2023. The statement indicates the monthly benefit of \$421.68 and states that the appellant receives a “life annuity” in that amount for “permanent after-effects following a criminal act” that took place in 2005.

**B.** A 168-page document received at the Tribunal on November 6, 2023. The document includes three submissions:

**1.** A 3-page typed submission from a disability advocate. In addition to argument the advocate explained that:

- Due to an “error in reporting” the reconsideration decision incorrectly states that the monthly payments from IVAC are WCB payments.
- The payments from IVAC are a “monthly indemnity for permanent disability” as the appellant was a victim of crime.
- The IVAC policy manual indicates that payments from IVAC are awarded to victims of crime. The appellant incurred a criminal injury in Quebec and therefore applied for IVAC. The payment will be awarded to the appellant for life.

**2.** The IVAC policy manual (154 pages in French). The panel is not bilingual, so the Tribunal asked the advocate for the relevant sections and had them translated into English:

- Page 12 (heading “Temporary Total Disability”) states that the purpose of the policy is to specify the requirements “for payment of compensation of temporary total disability.” This section of the policy explains that “temporary total disability” is the

period when victims of crime are unable to work and are receiving medical care. Compensation is paid during this period.

- Page 37 (heading “Permanent Disability”) states that crimes may have permanent after-effects despite care because physical or psychological harm can prevent the victim from resuming their usual occupation. Once the period for compensation of “temporary total disability” ends, the law provides for an assessment of the victim’s “anatomic physiological deficit” and the victim’s “unfitness to return to work.” Compensation for permanent disability is based on the percentages obtained from these assessments.
- Page 38 (heading “Details”) states that in cases of “total permanent disability as a result of crime,” victims are entitled to an annual “annuity” based on 90% of their weighted income. In cases of “partial permanent disability” victims are entitled to the same annuity proportional to the percentage of disability.

**3.** A copy of the Quebec *Crime Victims Compensation Act* (11 pages in English). The text states, among other things, that the “advantages” that a victim of crime may benefit from under the Act are those provided in specified sections of the *Workers’ Compensation Act*. Under an agreement with other provinces, payments of benefits under the Act may be made to victims not domiciled in Quebec.

#### *Admissibility - additional documents*

The ministry had no objections to the documents being considered as evidence. The panel admits all the documents under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the statement from IVAC and the submission from the advocate add additional detail about the nature and purpose of the payments.

While the panel is not bilingual, the French policy manual, with a few translated pages, provides context under which the payments are made. Additionally, the Quebec *Crime Victims Compensation Act* provides general information about entitlements for victims which assists the panel in understanding what benefits are available for victims of crime in Quebec.

*Oral testimony*

The appellant requested an in-person hearing and was accompanied by the advocate. The ministry attended by phone. In addition to stating their argument on appeal, the advocate confirmed that the payments from IVAC are in no way associated with the Worker's Compensation Board in BC or paid under the *Workers' Compensation Act*. The appellant explained that she mistakenly said that the payment was from WCB because her disability caused her some confusion.

In response to a question from the panel, the advocate said that Quebec has one organization for workers' compensation and a separate organization for victims of crime. IVAC follows the *Crime Victims Compensation Act* [Quebec], as well as its own policies which are published only in French.

The appellant explained that the money she receives from IVAC is for "PTSD and physical injury" and not for a disability. The appellant said that she received a lump sum payment of \$20,000 as well as the ongoing monthly payment of \$421.68. The appellant explained that all the compensation she received "was under the same injury as an indemnification."

In response to a question from the panel, the ministry explained that in BC, crime victims' assistance "comes through WCB because they have the structure to make the payments." The Workers' Compensation Board "is the umbrella" and it doesn't matter if the injury happened at work or not. The ministry believes that Quebec would have a similar system.

The appellant confirmed that her injury happened at home due to a criminal act by another person; it was not a workplace injury. The appellant explained that the money she receives from IVAC is not based on the formula in the IVAC policy manual (i.e., 90% of weighted income) because she was not working at the time of the injury.

*Admissibility - oral testimony*

The panel admits the submissions of both parties under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the discussion added breadth and clarity to the type of injury and compensation the appellant is receiving from IVAC.

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

The issue on appeal is whether the ministry's determination that IVAC money is unearned income that is not exempt under the Regulation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The appellant does not dispute that the payments are "unearned income" under section 1(1) of the Regulation. The appellant believes that the IVAC payments are exempt and should not be deducted from her disability assistance. The appellant wants the ministry to stop deducting \$421.68 per month. The appellant wants the ministry to repay her the deductions made to date.

### **Arguments**

#### *Appellant's position*

The appellant's position is that the IVAC payments should not be deducted from her disability assistance because as a victim of crime, the payments are exempt under the ministry's legislation. The advocate argued that under section 7 of Schedule B of the Regulation, IVAC payments should be treated as exempt unearned income because subsection 7(1)(c) of the Schedule says that "an award" for a criminal injury is exempt (except for the amount that would exceed the asset limits under the Regulation). The advocate indicated that an award of \$421.68 per month does not exceed the appellant's assets.

At the hearing, the advocate argued that a victim of crime receiving payments for an injury can be considered an "award" under subsection 7(1)(c) of Schedule B because an "award" can be a recurring payment ("it doesn't have to be a lump sum"). The advocate noted that the Regulation does not specify a one-time payment. The advocate argued that the money can come from IVAC because the Regulation does not say what the source must be. According to the advocate, subsection 7(1)(c) only requires the payments to be compensation for a criminal injury.

The appellant added that the ministry treated the IVAC money as a "disability payment or pension", but the money is not a "pension" because "it is a gift to indemnify my psychological and physical damage." The appellant said that she wants the ministry to respect her rights.

*Ministry's position*

In the reconsideration decision the ministry found that IVAC money is unearned income under section 1 of the Regulation. The ministry argued that the IVAC payments are not exempt from disability assistance under the deduction and exemption rules set out in Schedule B. The ministry determined that IVAC money is a “monthly indemnity” and argued that it is not exempt because a monthly indemnity under the *Indemnisation des Victimes D’actes Criminels* (IVAC) is not specifically listed in section 1(a) of Schedule B as an exemption from the ministry’s net income calculation (under Schedule A), or in section 7 of Schedule B as a type of unearned income that is exempt.

The ministry argued that section 3 of Schedule B of the Regulation (“qualifying income” paid under the *Workers’ Compensation Act*) does not apply to the appellant because the indemnity from IVAC is not paid by WCB under British Columbia legislation. At the end of the reconsideration decision the ministry said that there are no other exemptions in Schedule B that apply to IVAC income. The ministry determined that the “disability pension” received from IVAC must be deducted from the appellant’s assistance under section 24 of the Regulation.

At the hearing, the ministry argued that an “ongoing pension” would not be exempt as an “award” under subsection 7(1)(c) of Schedule B of the Regulation because an “award” is generally understood to be a one-time payment. In a discussion with the panel, the ministry accepted that “indemnity just means compensation for a criminal injury.” The ministry said that its own personal understanding is that a “monthly annuity is like a pension” but an award for a criminal injury is a one-time payment.

The ministry noted that the Regulation is very specific regarding which types of payments are exempt from the ministry’s determination of net income. The ministry highlighted subsection 1(a)(xxxviii) of Schedule B, which exempts money paid under the *Criminal Injury Compensation Act* from the calculation of net income under Schedule A of the Regulation. However, the exemption only applies to minors as the loss or damage had to occur when the victim was under 19 years of age. The advocate replied that this provision would not apply in any event because it is only for injuries that happened in British Columbia

At the hearing, the ministry acknowledged that the reconsideration decision took a narrow approach in finding that the IVAC payment is not exempt because it is not specifically listed in sections 1(a) or 7(1) of Schedule B. The ministry said it felt the wording of the

reconsideration decision was unfortunate. The advocate replied that the IVAC payment “is listed in the Regulation [Schedule B], captured by subsection 7(1)(c) under the word “award.”

### **Panel’s decision – unearned income**

The panel finds that the ministry reasonably determined that IVAC payments are unearned income, but the monies are not a “disability pension” as stated by the ministry. The payments are more appropriately captured by section 1(1)(t) of the Regulation which says that unearned income includes “any other financial awards or compensation.”

The ministry said that IVAC funds are a “disability pension” under subsection 1(1)(j) of the Regulation (disability payment or pension) but that determination is not reasonably supported by the evidence. While the original documentation from IVAC used the words “indemnity for permanent disability” that could reasonably be interpreted as a disability pension, the most recent evidence from IVAC makes it clear that the payments are monies paid as the result of a criminal injury.

The May 30, 2023, statement from IVAC terms the payment “total temporary disability benefits,” but explains in the narrative that it is a “monthly indemnity for permanent disability.” The more recent IVAC statement (November 27, 2023) confirms that the payment is a “life annuity” paid as the result of a criminal injury.

Section 1(1) of the Regulation defines “unearned income” by listing sources of funds that are considered unearned. The list includes:

- workers' compensation benefits and disability payments or pensions [clause (j)]
- certain awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act* [clause (s)]
- any other financial awards or compensation [clause (t)].

The appellant corrected her original submission and confirmed that she does not receive WCB benefits or any compensation under *British Columbia* criminal injury or victims’ assistance legislation. The appellant’s injury happened in Quebec and the payments originate from Quebec under IVAC policy. The panel finds that the IVAC payments are unearned income because they “are other financial awards or compensation” as the result of a criminal act in Quebec.

**Panel's decision – exemption**

The panel finds that the ministry's decision was not reasonable because the ministry did not fully consider the deduction and exemption rules set out in the Regulation. The ministry took a narrow approach, concluding that payments from IVAC are not exempt because *Indemnisation des Victimes D'actes Criminels* (IVAC) is not named in section (1)(a) or section 7(1) of Schedule B.

The ministry's sole reason for denying the exemption was the absence of wording to say that payments from a specific organization in Quebec (IVAC) are exempt. In the panel's view, this narrow approach was not a reasonable application of the legislation because the ministry failed to consider whether the payments are captured under subsection 7(1)(c) of Schedule B, as an "award" (as argued by the advocate).

Under subsection 7(1)(c) of the Schedule, a "criminal injury compensation award or other award" is exempt, except the amount that would exceed the asset limits under section 10 of the Regulation. "Criminal injury compensation" and "award" are not defined in the legislation and according to the advocate, any ambiguity should be resolved in favour of the appellant.

The panel makes no finding of whether the IVAC payment is an "award" under subsection 7(1)(c) of Schedule B. The test of reasonableness is focused on the ministry's determination that IVAC monies are not exempt because "IVAC" is not spelled out in the Regulation as an exempt type of income. The panel acknowledges that it cannot base a finding of unreasonableness on procedural deficiencies in the ministry's adjudication process. The panel's authority under section 24 of the *Employment and Assistance Act* is to decide whether the reconsideration decision was reasonably supported by the evidence, or a reasonable application of the legislation.

The failure to consider whether the payment fits under "award" is not just a matter of procedure. In the panel's view, a reasonable application of the legislation requires the ministry to look at the Regulation's objective and purpose to make a fair and thorough decision. The objective of the deduction and exemption rules under Schedule B is to authorize an exemption for certain types of payments and sources of funds.

While section 7(1) of Schedule B lists many sources for funds, these mainly involve money from two different streams:

- private transactions such as mortgage interest, trust funds and personal injury settlements.
- Province of BC and Government of Canada programs or settlements.

As noted by the advocate, subsection 7(1)(c) of Schedule B is silent on whether the exemption has to come from compensation that was awarded and administered in British Columbia. Given that the objective of Schedule B is to allow an exemption for many types of funds, the ministry needed to determine whether the IVAC money was captured in the Schedule despite the absence of the words *Indemnisation des Victimes D'actes Criminels* (IVAC).

At the reconsideration, the ministry ruled out other types of deductions or exemptions by stating that WCB income, Employment Insurance payments, and income from suite rentals (which can be deducted from unearned under section 6 of Schedule B) do not apply in the appellant's circumstances. Therefore, it would have been reasonable for the ministry to also consider whether the exemption for an "award" should be ruled out or not. As noted above, the ministry did not speak to that exemption in their decision.

The ministry determines the recipient's monthly entitlement to disability assistance by performing the calculation set out in Schedule A of the Regulation. Under this Schedule, the ministry is required to deduct unearned income dollar for dollar from the recipient's assistance rate subject to any deductions and exemptions that apply. The deduction of \$421.68 per month from the appellant's disability assistance is not reasonable because the ministry record indicates that a thorough assessment of the exemptions set out in the Regulation was not made.

## **Conclusion**

The panel finds that the ministry's decision was not a reasonable application of the legislation in the circumstances of the appellant for the reasons set out above. In particular, the ministry's decision was unreasonable because they applied the legislation too narrowly. The ministry overlooked the broader purpose and objective of the legislation by not considering whether the payments from IVAC are an "award" under subsection 7(1)(c) of Schedule B. The panel rescinds the reconsideration decision. The appellant is successful with her appeal.

**Schedule – Relevant Legislation**

## Employment and Assistance for Persons with Disabilities Regulation

**Definitions**

**1 (1)** In this regulation:

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

- (a)** money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b)** cooperative associations;
- (c)** war disability pensions, military pensions and war veterans' allowances;
- (d)** insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e)** superannuation benefits;
- (f)** any type or class of [Canada Pension Plan](#) benefits;
- (g)** employment insurance;
- (h)** union or lodge benefits;
- (i)** financial assistance provided under the [Employment and Assistance Act](#) or provided by another province or jurisdiction;
- (j)** workers' compensation benefits and disability payments or pensions;
- (k)** surviving spouses' or orphans' allowances;
- (l)** a trust or inheritance;
- (m)** rental of tools, vehicles or equipment;
- (n)** rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o)** interest earned on a mortgage or agreement for sale;
- (p)** maintenance under a court order, a separation agreement or other agreement;
- (q)** education or training allowances, grants, loans, bursaries or scholarships;
- (r)** a lottery or a game of chance;
- (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;
- (t)** any other financial awards or compensation;
- (u)** Federal Old Age Security and Guaranteed Income Supplement payments;
- (v)** financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the [Immigration and Refugee Protection Act \(Canada\)](#) or the [Immigration Act \(Canada\)](#);

- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation;

### 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);
- (iii) 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;
  - (ii) change in income received by the family unit and the source of that income;
  - (iii) change in the employment and educational circumstances of recipients in the family unit;
  - (iv) change in family unit membership or the marital status of a recipient;
  - (v) any warrants as described in [section 14.2 \(1\)](#) of the Act;
  - (vi) 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.

**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
- (a.1)** Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
- (b)** the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
1	Sole applicant / recipient and no dependent children	Singles, couple, and two-parent families where one family member is a person with disabilities (PWD), and the other is not a PWD and is under 65	\$983.50

**Monthly shelter allowance**

**(2)** The monthly shelter allowance for a family unit to which section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act does not apply 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 3 Maximum Monthly Shelter
1	1 person	\$500

## 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;
- (ii)**Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]
- (iii)**Repealed. [[B.C. Reg. 48/2010](#), Sch. 1, s. 2 (c).]
- (iv)**a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1)**the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v)**the basic child tax benefit;
- (vi)**a goods and services tax credit under the [Income Tax Act \(Canada\)](#);
- (vii)**a tax credit under [section 8](#) [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the [Income Tax Act \(British Columbia\)](#);
- (viii)**individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix)**individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x)**individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi)**individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

**(xii)** money that is

**(A)** paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

**(B)** paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;

**(xii.1)** money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;

**(xii.2)** money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;

**(xiii)** the BC earned income benefit;

**(xiv)** money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

**(xv)** a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

**(xvi)** Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]

**(xvii)** and (xvii.1) Repealed. [B.C. Reg. 99/2023, App. 2, s. 3 (a).]

**(xviii)** financial assistance payments provided under Part 6 of the [Adoption Regulation, B.C. Reg. 291/96](#);

**(xix)** a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

**(xx)** money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to

enable the person with disabilities to live in the community instead of in an institution;

**(xxi)** Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

**(xxii)** payments granted by the government of British Columbia under [section 8](#) [*agreement with child's kin and others*] of the [Child, Family and Community Service Act](#);

**(xxiii)** payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

**(xxiv)** Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

**(xxv)** payments granted by the government of British Columbia under an agreement referred to in [section 93 \(1\) \(g\) \(ii\)](#) of the [Child, Family and Community Service Act](#), for contributions to the support of a child;

**(xxvi)** a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

**(xxvii)** payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

**(xxviii)** Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

**(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;

**(xxx)** a refund provided under Plan I as established under the [Drug Plans Regulation](#);

**(xxxi)** payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

- (xxxii)**a Universal Child Care Benefit provided under the [Universal Child Care Benefit Act \(Canada\)](#);
- (xxxii.1)**a rental housing benefit provided under the [Rental Housing Benefit Act \(Canada\)](#);
- (xxxii.2)**a dental benefit provided under the [Dental Benefit Act \(Canada\)](#);
- (xxxiii)**money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiv)**money withdrawn from a registered disability savings plan;
- (xxxv)**a working income tax benefit provided under the [Income Tax Act \(Canada\)](#);
- (xxxvi)**Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxvii)**the climate action dividend under [section 13.02](#) of the [Income Tax Act](#);
- (xxxviii)**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;
- (xxxix)**money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xl)**payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli)**payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii)**payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xliii)**money paid or payable from a fund that is established by the government of British Columbia, the government of

Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

**(xliv)** payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

**(xlv)** a BC early childhood tax benefit;

**(xlv.1)** a BC child opportunity benefit;

**(xlv.2)** a BC family benefit;

**(xlvi)** child support;

**(xlvii)** orphan's benefits under the *Canada Pension Plan Act* (Canada);

**(xlviii)** money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

**(xlix)** gifts;

**(l)** education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

**(li)** money withdrawn from a registered education savings plan;

**(lii)** compensation paid or payable under Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the [Workers Compensation Act](#) to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) of that Act;

**(liii)** money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

**(liv)** money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee

- of the ministry or a person retained under a contract to perform services for the ministry;
- (liv.1)** money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
- (liv.2)** money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
- (lv)** a disabled contributor's child's benefit paid or payable under the [Canada Pension Plan](#);
- (lvi)** payments granted under an agreement referred to in [section 94](#) of the [Child, Family and Community Service Act](#);
- (lvii)** money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (lviii)** and **(lviv)** Repealed. [B.C. Reg. 99/2023, App. 2, s. 3 (a).]
- (lx)** money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the [Department of Public Safety and Emergency Preparedness Act \(Canada\)](#);
- (lxi)** money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program;
- (lxii)** a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the [Insurance \(Vehicle\) Act](#) and the plan operated under that Act;
- (lxiii)** an amount that is paid or payable, as a single payment or series of payments, as follows:
- (A)** the amount is paid or payable by a person who is or was a landlord, owner or manager, or a person who holds or held a similar position, in relation to

leased, rented or licensed residential premises, whether or not the [Residential Tenancy Act](#) or the [Manufactured Home Park Tenancy Act](#) applies to that premises;

**(B)**the amount is paid or payable to a person who is or was a tenant, lessee, licensee or occupant, or a person who has or had a similar right or permission to use the premises for residential purposes;

**(C)**the amount is paid or payable as full or partial compensation for loss of the residential use of the premises, including for eviction, relocation, demolition, temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use;

**(D)**the amount is paid or payable under an enactment, a policy or a contract, or voluntarily or at the discretion of the person referred to in clause (A);

**(lxiv) to (lxvii)**Repealed. [B.C. Reg. 99/2023, App. 2, s. 3 (a).]

**(lxviii)**a voted support payment;

**(lxix)**money that is paid under or from an Indigenous financial settlement,

**(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](#),

**(b.1)**if money is paid under or from an Indigenous financial settlement to an Indigenous governing body, the exemption under paragraph (a) (lxix) includes investment income earned on that money by the Indigenous governing body before it is distributed to a person,

**(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 (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 Veterans Affairs Canada 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).]

**Repealed**

**7.1-7.2** Repealed. [B.C. Reg. 226/2014, s. 4.]

APPEAL NUMBER 2023-0322

**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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2023/12/06

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2023/12/06

Print Name

Adam Shee

Signature of Member

Date (Year/Month/Day)

2023/12/06