

**Part C – Decision Under Appeal**

Under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated November 27, 2023 (the “*Reconsideration Decision*”) that the Appellant was not eligible for disability assistance because the Appellant’s total “unearned income” exceeds the amount of disability assistance calculated for the Appellant.

**Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (the “Act”):

Section 3 [Eligibility of family unit]

*Employment and Assistance for Persons with Disabilities Regulation* (the “Regulation”):

Section 1 [Definitions] - “unearned income” subsections (f) and (i)

Section 9 [Limits on income]

Section 24 [Amount of disability assistance]

Schedule A [Disability Assistance Rates]

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

Section 4 [Monthly shelter allowance]

Section 6 [People receiving room and board]

Schedule B [Net Income Calculation]

Section 1 [Deduction and exemption rules]

Section 6 [Deductions from unearned income]

Section 7 [Exemptions - unearned income]

Section 8 [Minister's discretion to exempt education related unearned income]

*Employment and Assistance Act* SBC 2022 c.19

Section 19.1 [Application of *Administrative Tribunals Act*]

Section 24 (1) and (2) [Decision of panel]

*Administrative Tribunals Act*, SBC 2004, c 45

Section 44 [Tribunal without jurisdiction over constitutional questions]

Section 46.3 [Tribunal without jurisdiction to apply the *Human Rights Code*]

(Text of the above is attached at the end of the decision)

## Part E – Summary of Facts

### Background – Summary

This is the second appeal on the Appellant’s application for disability assistance. In the first, the Ministry’s denial of disability assistance was rescinded by a panel of this Tribunal after founding the denial to be based upon an unreasonable interpretation of a certain applicable enactment. Afterward, when the Ministry calculated the amount of assistance payment, the Ministry determined that the Appellant’s “unearned income” exceeded the disability assistance that would be payable, which (again but on a different basis) made the Appellant ineligible for disability assistance. That is the substance of the *Reconsideration Decision*.

The following is a summary of the key dates and information in chronological order.

- On June 30, 2023, the Appellant applied for disability assistance.
- On July 14, 2023, the Ministry denied the Appellant’s request for disability assistance which the Appellant appealed.
- On August 8, 2023, the Ministry denied the Appellant disability assistance at reconsideration. The reasons were because the Appellant was absent from a lawful place of confinement under a temporary absence program (day parole) and residing at a halfway house (or community based residential facility) that was funded, sponsored, or contracted by the federal government.
- On September 12, 2023, a panel of this Tribunal rescinded the August 8<sup>th</sup> decision on the grounds that resolved an ambiguity in favour of the Appellant where the *Regulation* did not define “day parole” and “temporary absence” to render the Appellant ineligible for disability assistance (the “*September Tribunal Decision*”).
- On November 2, 2023, the ministry informed the Appellant that the Appellant’s request for disability assistance was denied for reasons not examined until after the *September Tribunal Decision*. The (current) Ministry denial was because the Appellant’s unearned income exceeded the applicable rate of disability assistance.
- On November 16, 2023, the Appellant submitted a Request for Reconsideration.
- On November 27, 2023, the *Reconsideration Decision* stated, after setting out the background and the legislation:

#### Decision

The ministry finds the CPP income you receive is considered unearned income as set out in Section 1(f) of the [*Regulation*] and the \$120 stipend you receive from Federal Corrections is unearned income as set out in Section 1(i) of the [*Regulation*]. Both incomes are not exempt from disability assistance. .... The

ministry calculates your monthly net income from your CPP and the stipend as \$277.14.

The ministry finds your living situation to be one of room and board. The Federal Government is paying the [housing operator] to provide food and accommodation at the [halfway house]. As your room and board is covered, the ministry calculates the rate of disability assistance as follows: As set out in Section 6 of Schedule A, \$0 for your actual costs for room and board, plus \$187 for each month for each applicant who is a person with disabilities, and \$75 for the minimum shelter rate as set out in Section 4(2)(a) for a sole applicant, totaling \$262.

Therefore, in accordance with Section 9(2) of the [*Regulation*], the ministry finds as your \$277.14 net income exceeds the \$262 rate of disability assistance, you are not eligible for disability assistance. ...

### **Appellant Submissions**

The Appellant submitted a statement of the "Reasons for Appeal" stating disagreement with the *Reconsideration Decision* as follows:

The Ministry continues to treat me as though I am a parolee rather than a Senior Citizen with a Disability. This appeal is not about money, I want a file opened so that I can qualify for the additional supports, bus, medical equipment and supplies, post surgical needs that [are] not necessarily covered through other means. ...

That request was, in substance, reiterated in a separate written submission, dated December 9, 2023, with the attachments listed below:

- A letter to the Tribunal, dated December 9, 2023, from the Appellant (the key points of which are set out further below).
- A letter faxed to the Tribunal on December 11, 2023, from the Appellant, with attachments that included:
  - Copies of documents received from the Ministry:
    - Reports dated November 11, 14 and 22, 2023 confirming estimates of assistance amounts calculations.
    - An email dated November 28, 2023 denying a clothing crisis supplement because the Appellant was not eligible for assistance (not a recipient of disability assistance) and therefore ineligible for crisis supplements.

- A letter dated Nov 30, 2023, indicating a Bus Pass application had been rejected.
- A letter from the housing operator, dated November 16, 2023:
  - Confirming that the Federal Government provides the funding for room and board.
  - Confirming that their budget does not allow for the purchase of specialized, more expensive food that a resident might need, and that the Appellant would be required to purchase any specialized or extra food required for recovery after the planned surgery.
  - Stating that the housing operator does not provide medical supplies.
  - Attaching an unsigned “Bus Ticket Eligibility” form for bus tickets outlining eligibility and terms for usage.

The following is a summary of the key points from the December 9, 2023, letter:

- The *Reconsideration Decision* was “Patently Unreasonable” based upon discrimination on listed grounds common to the federal and provincial Human Rights legislation.
- The Ministry acted in “bad faith”.
- The Ministry applied a double standard and created another class of citizen because “Policy” does not speak about or to a Senior Citizen with disabilities on Parole.
- Annotations to a decision of the Supreme Court of Canada and the Charter section 7 identify rights or intentions that:

... do not say “except for a PWD or a PWD on Parole” (“PWD” means a “person with disabilities”). In fact, The Charter intentionally protects marginalized peoples, disabled individuals and visible minorities, and others. [sic]

Therefore, The Appellant believes that discrimination had also occurred at the previous decision process however, The Appellant does not believe that the panel assessed the discrimination and may not have been able to. [sic] ...

In spoken submissions the Appellant:

- Confirmed the amount of CPP and stipend received.
- Described the financial, health and life stresses of upcoming invasive surgery, inability to work and the lack of benefits and stated:

To the best extent possible all I'm looking to do is to ensure that when I'm even more unable to look after myself [post-surgery] I have some benefits. I

have something to rely on that is not going to put me back in prison because I can't survive in the community.

- Described policy stating:
  - “[T]here is a gap in policy” because there should be “room for an exception here” because Human Rights legislation and “policy doesn’t say it can’t consider other things”.
  - Ministry policies allow payments by the federal government to “intervene in a negative way”.
- Asserted that the room and board should be calculated at the charge rate by the housing operator to the federal government rather than the amount paid by the Appellant (\$525 and \$0, respectively).
- Sought a process that had BC disregard the federal funding to allow access to “peripheral benefits” before then considering payment amounts that might deduct for the federal stipend and payment of room and board stating:

... what I'm looking for is to have a file open that may not qualify me for monetary participation but would qualify me for the peripherals benefits on the medical side ... like the assistance devices, walking cane, wheelchair, whatever may be necessary through that recovery period of my surgery.

- Questioned why the Ministry provided earlier statements of estimated payments that were never paid, which also contained different calculations, with a deduction the Appellant challenged. The Appellant expressed that the Ministry was not providing the safety net that it was intended to provide.

### **Ministry Submissions**

The Ministry representative explained why the application that appeared settled by the earlier hearing rescinding the denial was not before the Tribunal on an appeal of a denial on subsequent grounds. [This was not contested and no further mention of it is made in this decision.]

The Ministry representative also explained the statements of estimated payments sent by the Ministry. These were described as automated estimations based on a file that was not set up accurately and without the room and board and income calculations. The representative apologized but had no explanation for a “repayment” deduction and referred the Appellant to others in the Ministry. The calculation that applied was the one in the *Reconsideration Decision*.

A query about access to a clothing crisis supplement was included in the Appellant's documents attached to the written submission. The Ministry representative answered stating that the Appellant must be receiving assistance payments in order to qualify for crisis supplements.

The Ministry representative reviewed the calculation stated in the *Reconsideration Decision* as the *Regulation* establishing that the Appellant, as a family unit, is not eligible for disability assistance if their net income determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for the family unit size. The inclusion of the Appellant's stipend from the federal government, CPP and lack of exemption from inclusion was reviewed from the *Reconsideration Decision*.

The Ministry reviewed the cost of the Appellant's room and board. It stated that the cost was based upon the out-of-pocket expense to the Appellant (which is \$0) and not the amount that the housing operator might be charging the federal government.

The Ministry considers that it is acting as the "payer of last resort" which means calculations are to include federal funds that are paid to the Appellant, and the room and board on the Appellant's own outlay, after federal payment.

### **Admissibility of New Evidence**

Under section 22(4) of the *Act*, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Panel may admit written submissions (including stated "Reasons for Appeal") and statements from the Appellant and Ministry (representative) made at the hearing.

The Panel admits the "Reasons for Appeal", and written submissions of the Appellant, as well as the testimony of the Appellant.

Where a certain statement is relevant, and given weight that might affect findings, it is specifically mentioned in the Panel's reasons below.

**Part F – Reasons for Panel Decision**

The panel's role in appeals, such as this, is not to redo the *Reconsideration Decision*. It is to assess whether the *Reconsideration Decision* meets a standard of reasonableness. The standard applied is whether the *Reconsideration Decision* reasonably applies applicable laws and is reasonably supported by the evidence available at the reconsideration. However, in addition the Panel may also consider any evidence newly submitted as part of the appeal.

Referring to the *September Tribunal Decision* the Appellant noted that the panel "may not have been able" to consider discrimination. This is a correct assumption and equally applies here. This Panel is limited to the jurisdiction described above and is unable to consider allegations of Charter or human rights violations, or allegations separate from the reasonableness standards above where there is a claim of bad faith, double standards, or discrimination on prohibited grounds. The same applies with respect to policy. Government has wide authority to establish policy as to how it will exercise its power, and that may include choices affecting people positively or negatively.

Specifically, the Act at section 19.1(e) and (f) apply sections 44 and 46.3 of the *Administrative Tribunals Act* which say that this Tribunal "does not have the jurisdiction", respectively, "over constitutional questions" or "to apply the *Human Rights Code*."

In terms of the scope of this matter, the issue of the alleged treatment of the Appellant as a parolee was part of the *September Tribunal Decision* and no evidence was provided to establish relevance to this matter or jurisdiction of this Panel to consider it. The Panel find neither to exist and does not consider the issue.

The Appellant considers that there are policy gaps that would aid disadvantaged people, and those in the exceptional circumstances such as the Appellant. The specific policy was not identified. The only directives shown to be at work in this matter are legislative enactments, not policy.

While there may be larger policy issues, including the Appellant's need for support through surgery and for rehabilitation, this Tribunal has no power to be the venue for examination.

The primary issue here is whether the calculations in the *Reconsideration Decision* are calculated properly based upon a reasonable interpretation of the enactments and reasonably supported by evidence. The Panel was not directed to any specific evidence or interpretation of legislation that might show otherwise.

As stated in section 9(2) of the *Regulation*:

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



disability assistance determined under Schedule A for a family unit matching that family unit.

The Panel was not directed to any specific evidence or interpretation of legislation concerning the calculation of net income, exemptions, deductions, inclusions, or sources for calculations. Nevertheless, the Panel examined and found that on its face the calculation is based upon a reasonable application of the legislation and evidence.

The Panel specifically considered the cost of room and board. Under *Regulation* Schedule A section 6(a)(i) the amount of “actual cost of the room and board” is reasonably interpreted as actual cost to the family unit. A gift or subsidy that reduces that family’s outlay, or the societal cost of housing are reasonably not considered. Indeed, as in this case it would amount to a double counting of costs from the Crown, notwithstanding that there is a division into the federal and provincial public purse in some manner.

No exemption was identified to exempt the stipend and CPP from inclusion as “unearned income”, and the Panel finds that they were properly included in the calculation.

The Appellant was given credit for \$75 as the greater of the amounts calculated under *Regulation* Schedule A section 4(2) where the actual shelter cost was \$0.

Reviewing each element of the calculation the Panel found no error.

The Appellant sought access to benefits such as Health Supplements, and medical services, but noted their inaccessibility until becoming a recipient of disability assistance payments. The Panel sympathises with the Appellant that receipt of federal funds prevents qualification, while receipt of disability benefits would reduce federal funds that would enable that eligibility. While the difference in total dollars may be little, the latter opens access to further funding for the desired Health Supplements. This interaction of federal and provincial funds is not within this Panel’s jurisdiction. The Ministry is empowered to calculate and assess the Appellant’s eligibility for disability assistance as it has, and it was reasonable in doing so.

It is worth noting that this does not mean that other assistance is not available from the Ministry, as the Appellant has mentioned were described by staff but personally difficult to navigate. The Panel encourages the Appellant to see what assistance staff can provide including access to an advocate.

### **Decision**

The Appellant is not successful on appeal, the Panel having found that the *Reconsideration Decision* is:

1. reasonably supported by the evidence, and

2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the *Reconsideration Decision*.

## Appendix – Relevant Legislation

### ***EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT***

#### **Eligibility of family unit**

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

### ***EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION***

#### **Definitions**

- 1** (1) In this regulation:

...

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

...

- (f) any type or class of Canada Pension Plan benefits;

...

- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;

#### **Limits on income**

- 9** (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

#### **Amount of disability assistance**

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

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

### **Schedule A**

#### **Disability Assistance Rates**

*(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 8 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 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 Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

### People receiving room and board

**6** (1) For a family unit receiving room and board other than in a facility mentioned in section 8 (2) (b) (i) [*people in special care*] of this Schedule, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the smaller of

(a) the sum of

(i) the actual cost of the room and board, plus

(ii) \$60 for each calendar month for each applicant or recipient, plus

(iii) \$127 for each calendar month for each applicant or recipient who is a person with disabilities, plus

(iv) Repealed. [B.C. Reg. 193/2017, s. 11 (b).]

(v) \$40 for each calendar month for each dependent child in the family unit, and

(b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) Repealed. [B.C. Reg. 122/2019, App. 2, s. 5 (b).]

(3) For the purposes of subsection (1) (a) (i), if the actual cost of room and board is less than the minimum determined under section 4 (2) (a) or (2.1) (a) for the family unit, the actual cost is conclusively deemed to be that minimum.

### 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** (0.1) In this section:

**"disability-related cost"** means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

**"disability-related cost to promote independence"** means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

**"intended registered disability savings plan or trust"**, in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

**"structured settlement annuity payment"** means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly 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.]

### **Minister's discretion to exempt education related unearned income**

**8** (1) In this section:

**"day care costs"** means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

**"education costs"**, in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

### ***Employment and Assistance Act SBC 2022 c.19***

#### **Application of *Administrative Tribunals Act***

**19.1** The following provisions of the *Administrative Tribunals Act* apply to the tribunal: ...

(e) [section 44](#) [*tribunal without jurisdiction over constitutional questions*];

(f) [section 46.3](#) [*tribunal without jurisdiction to apply the [Human Rights Code](#)*];

#### **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.

***Administrative Tribunals Act, SBC 2004, c 45***

**Tribunal without jurisdiction over constitutional questions**

**44** (1)The tribunal does not have jurisdiction over constitutional questions.

**Tribunal without jurisdiction to apply the *Human Rights Code***

**46.3** (1)The tribunal does not have jurisdiction to apply the *Human Rights Code*.



**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)

2023/12/22

Print Name

Wes Nelson

Signature of Member

Date (Year/Month/Day)

2023/12/21

Print Name

Diane O'Connor

Signature of Member

Date (Year

2023/12/22