

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated November 3, 2023 (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”). The Ministry determined that the Appellant was not eligible for disability assistance for the month of October 2023 because the Appellant’s employment insurance payments in August 2023 exceeded the the Appellant’s rate of assistance under Schedule A to the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation- sections 1, 9, 24, and 29, Schedule A- sections 1, 2, and 4, and Schedule B- section 7

Employment Insurance Act (Canada)- sections 22, 23 or 23.2

A full text of the above-noted legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The Appellant is a sole recipient of disability assistance, who receives \$1,483.50 per month in assistance (\$983.50 as a support allowance and \$500.00 for a shelter allowance).

The information before the Ministry at the time of the Reconsideration Decision included the following:

- a printout of the Appellant’s transactions on his bank account, between August 1, 2023 and September 13, 2023, including the following transactions:
 - an \$802.00 employment insurance payment on August 15, 2023;
 - an \$802.00 employment insurance payment on August 23, 2023; and
 - an \$802.00 employment insurance payment on August 29, 2023;and noting that the Appellant’s claim was for sick benefits;
- the Appellant’s monthly report, dated September 5, 2023, showing one \$802.00 employment insurance payment for the month of August;
- the Appellant’s Common Claimant Report data match which indicated that the Appellant had received \$2,406.00 in medical employment insurance benefits in August 2023; and
- the Appellant’s Request for Reconsideration, dated September 28, 2023, in which the Appellant wrote that:
 - he wanted the Ministry to reconsider the denial of his October assistance, as he had been assured by a Ministry worker that he was able to receive employment insurance and disability assistance at the same time;
 - the Ministry was aware that he was receiving disability assistance but still issued two payments in July;
 - his last employment assistance payment of \$401.00, which amount is not relevant to the issue in this appeal, was issued on September 12; and
 - he had already spent the assistance and is unable pay rent.

In the Appellant’s Notice of Appeal, he wrote that he believed that he was eligible for October 2023 persons with disabilities benefits and would be submitting supporting documents as they were available.

The Appellant did not make any further submissions to the tribunal.

The Ministry made a submission to the tribunal, indicating that they would be relying on the Reconsideration Decision itself.

The panel admits the Appellant's statements in the Notice of Appeal as argument as there was no new evidence contained in them.

Part F – Reasons for Panel Decision***Issue on Appeal***

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for disability assistance for the month of October 2023 because the Appellant's employment insurance payments in August 2023 exceeded the Appellant's rate of assistance under Schedule A to the *Employment and Assistance for Persons with Disabilities Regulation* (the "Regulation").

Panel Decision

Schedule A to the Regulation sets out the maximum monthly amounts of support and shelter allowance to which recipients of disability assistance are entitled. In the case of the Appellant, a sole recipient, that amount is \$1,483.50 per month, comprised of a support allowance (\$983.50), shelter allowance (\$500.00).

Section 9 of the Regulation sets out that a family unit is not entitled to assistance if the family unit's net income is more than the amount of disability assistance determined by Schedule A. Section 24 further sets out that the amount of disability assistance payable to a family unit is the amount determined by Schedule A less the family unit's net income determined by Schedule B.

Schedule B sets out how a family's net income is calculated. The term net income is not a defined term in the Regulation. However, "unearned income", which is a component of net income is defined in section 1 of the Regulation and includes:

"Employment Insurance"

There are no qualifications in the definition of "unearned income" as to what types of employment insurance benefits must be included in the calculation of a recipient's net income. In the result, the employment insurance benefits received by the Appellant in August 2023 in the amount of \$2,406.00 form part of his net income for that month unless they otherwise qualify under the exemption and deduction rules set out in Schedule B.

Schedule B also sets out a number of items that are deductible or exempt from being included in the calculation of the Appellant's family unit's net income. Although the list of income items that is exempt in section 1(a) of Schedule B to the Regulation is lengthy (and

reproduced at the end of Part F of this decision), none of the items listed are applicable to any type of employment insurance benefits.

Section 1(d) of Schedule B to the Regulation lists several deductions from the calculation of unearned income and exemptions from unearned income. However, none of these deductions or exemptions, which are set out in sections 3, 6, 7, and 8 of Schedule B, apply to the Appellant either.

Of these sections outlined in Schedule B, only section 7(1)(g) references employment insurance benefits at all. There, three types of employment insurance benefits are listed as exempt from inclusion in the calculation of a recipient's net income. The three types of benefits that are exempt are those set out in sections 22, 23, and 23.2 of the *Employment Insurance Act* (Canada). Namely, they are:

- benefits that are payable to an employment assistance claimant who proves her pregnancy;
- parental benefits payable to an employment insurance claimant to care for one or more new-born children or children placed with a claimant for adoption; or
- benefits payable to an employment insurance claimant to care for a critically ill child.

The employment assistance benefits received by the Appellant do not fall under any of these categories as they were received by the Appellant as medical benefits.

Conclusion

The panel notes that it is unfortunate if the Appellant was advised that he was eligible for employment insurance benefits at the same time as he was receiving disability benefits, given the very narrow categories of employment insurance benefits where that would be the case. However, in view of the fact that the legislation clearly requires the inclusion of employment insurance benefits in the calculation of net income, with only three clear exemptions, the panel finds that the Ministry was reasonable in its determination that the employment insurance benefits received by the Appellant in August were in excess of his entitlement to disability assistance and, accordingly, made the Appellant ineligible for disability assistance in October.

The Appellant is not successful in this appeal.

Relevant Legislation*Employment and Assistance for Persons with Disabilities Regulation*

section 1

1 (1) In this regulation:

...

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

...

(g) employment insurance;

...

section 9

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.

section 24

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.

section 29

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.

Employment and Assistance for Persons with Disabilities Regulation, Schedule A

section 1

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*.

section 2

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

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(a.1) Repealed. [B.C. Reg. 193/2017, 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 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)

1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50
---	--	---	----------

section 4

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	\$500

Employment and Assistance for Persons with Disabilities Regulation, Schedule B

section 1

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) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with
- (A) the Sixties Scoop Settlement made November 30, 2017, or
 - (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (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) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lviv) money that is paid or payable from a settlement under
(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

- (B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;
- (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) money that is paid or is payable to or for a person from a settlement under the Williams Treaties Settlement Agreement signed August 22, 2018;
- (lxv) money that is paid or is payable to or for a person from a settlement under the Missanabie Cree First Nation Treaty Land Entitlement Settlement Agreement signed April 24, 2020;
- (lxvi) money that is paid or is payable to or for a person from a settlement under the Peepeekisis Cree Nation File Hills Colony Specific Claim Settlement Agreement signed March 23, 2021;
- (lxvii) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis;
- (lxviii) a voted support payment.
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Exemptions – Unearned Income

section 7

...

(1) The following unearned income is exempt:

...

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

...

Employment Insurance Act (Canada)

Pregnancy

22 (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant who proves her pregnancy.

...

Parental benefits

23 (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

...

Benefits — critically ill child

23.2 (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant who is a family member of a critically ill child in order to care for or support that child, if a medical doctor or nurse practitioner has issued a certificate that

(a) states that the child is a critically ill child and requires the care or support of one or more of their family members; and

(b) sets out the period during which the child requires that care or support.

2023-0373

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2024/January/14

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2024/January/14

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/January/14