

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision that money the Appellant receives from WorkSafeBC for Loss of Function and Vocational Rehabilitation are not exempt and must be deducted from his disability assistance. (This means \$998.05 must be deducted from the Appellant’s November and December 2023 disability assistance.)

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) -
Sections 1, 9, 24 and 29

Schedule A, Sections 1, 2 and 4

Schedule B, Sections 1, 3, 6, 7 and 8

Applicable legislation is found in Appendix A.

Part E – Summary of Facts

The Appellant is a sole recipient with Persons with Disabilities designation.

On October 27, 2023, the Appellant submitted a monthly report declaring \$1,277.50 from WorkSafe BC in September. The Appellant indicated \$614 was for a long-term pension and \$662.90 was for rehab training program; he provided the following payslips from WorkSafe BC:

- August 23 - \$307.45 for Loss of Function
- September 2- \$345.30 for a planning allowance
- September 20- \$345.30 for waiting for Approved Plan Start
- September 21 - \$307.45 for Loss of Function

On November 6, 2023, the Appellant submitted his monthly report declaring \$998.05 from WorkSafe BC in October. The Appellant indicated \$307.45 is long term pension and \$690.60 was for a school training program; he provided the following payslips from WorkSafe BC:

- October 15 - \$345.30 for Job Search Allowance
- October 22 - \$307.45 for Loss of Function
- October 29 - \$345.30 for Job Search Allowance

On November 22, 2023, the Ministry advised the Appellant that the money he received from WorkSafe BC is not exempt and must be deducted from his disability assistance.

On December 20, 2023, the Appellant submitted a request for reconsideration. The Appellant explained he is disputing the deduction of his vocational rehabilitation benefits from WorkSafe BC. The Appellant said he was provided inaccurate information from the Ministry about how his assistance would be affected; he would not have chosen to proceed with the vocational rehabilitation program if he knew it would affect his disability assistance. The Appellant provided the following:

- A statement written by the Appellant's advocate asking the Ministry to treat the Appellant's monthly income from WorkSafe BC as "student financial income" under the Regulation, Section 8 of Schedule B. The Appellant's advocate pointed out the Appellant did his utmost to ensure that his disability assistance would not be interrupted during his retraining.

- A copy of an email from the Appellant's vocational rehabilitation consultant confirming the following:
 - The Appellant's wage loss benefits ended May 14, 2023.
 - The Appellant received Vocational Rehabilitation Benefits for a planning allowance from May 15, 2023 to September 3, 2023 and Waiting for Approved Plan Start from September 3, 2023 and September 17, 2023.
 - The Appellant received Vocational Rehabilitation Benefits for Formal Training for the period of September 18 to October 1, 2023 and a Job Search Allowance for October 2 – 29, 2023.

On January 23, 2024, the Appellant filed a Notice of Appeal. Under Reasons for Appeal, the Appellant attached the following message:

"Why I disagree with the Ministry's reconsideration decision.

The Ministry does not want people to succeed in life. A person got injured due to injury and had to change careers in life, and the Ministry is not encouraging people to succeed in life. I was the person who got injured. Due to the injuries, I could not go back to my previous job.

I visited the Ministry at least 15 times to try and avoid this very situation. There were phone calls too. Every time something changed with WorkSafe, I followed up with the Ministry. Right from the beginning, I went to [the] Ministry to make sure I wouldn't get nailed like this. Each time, I was told that the pension would be deductible (which I knew) but that the schooling was separate funding and would not be deducted. After I learned that there would be a deduction after all, I talked to a supervisor. She was going to follow-up on why I was not informed properly for the last two years.

I want the \$998.05 back that they deducted because of their negligence (for November and December 2023.)

For two years, I was looking forward to having a new job and the education that would allow me to go forward in life. I'm not going to pursue WorkSafe training because it is not worth the hassle from the Ministry. The Ministry does not want people to succeed in life."

During the hearing, the Appellant restated his belief that the Ministry is discriminating against him by deducting monies that they were not deducting previously.

A member of the panel asked the Appellant if he has been dealing with one person or more than one person at the Ministry? The Appellant said he has dealt with multiple people at the Ministry because “they kept passing it on.” The Appellant explained his funding from WorkSafe BC changed as he moved through a four-stage process, and that he contacted the Ministry each time he moved to a new stage. The Appellant said he was told repeatedly by the Ministry that the pension would be deducted from his disability assistance, but the other monies from WorkSafe BC would not be deducted. The Appellant also noted that he reported the income received from WorkSafe BC consistently in his monthly report to the Ministry.

During the hearing, the Ministry relied on its reconsideration decision. A panel member asked the Ministry representative if there are any notes attached to the Appellant’s file that could help clarify why his WorkSafe BC income for Loss of Function and Vocational Rehabilitation appear to have been changed from being treated as exempt income to non-exempt income. The Ministry representative looked through the Appellant’s file and confirmed that the Appellant has contacted the Ministry with questions on multiple occasions, and that the Appellant’s monthly income from WorkSafe BC has changed more than once. Under the Regulation, WorkSafe BC income for Loss of Function and Vocational Rehabilitation is not exempt from deduction.

Admissibility of New Evidence

The panel admits the Appellant’s statement under the Reasons for Appeal section of his Notice of Appeal application and his testimony during the hearing, along with the Ministry’s testimony during the hearing as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the panel has weighed that evidence in making its decision as provided under 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The panel is required to determine if the Ministry’s reconsideration decision was a) supported by the evidence, or b) a reasonable application of the applicable enactment.

Applicable Legislation

Under Section 1 of the Regulation, “unearned income” means any income that is not earned income and includes money or value received from workers' compensation benefits and disability payments or pensions.

“Student Financial Assistance” is defined in section 1 of the Regulation as funding provided to students under the British Columbia Student Assistance Program, the Canada Student Financial Assistance Act, or a similar program provided by another province or jurisdiction. This is commonly referred to as student loans.

Section 24 of the Regulation says that the Minister calculates the amount of disability assistance provided to a family unit by subtracting the family unit’s net income (Under Schedule B) from the rate of income assistance (under schedule A).

Section 29 of the Regulation says a person must report income by the fifth day of the month after the month you receive it. The Ministry uses this information to calculate net income and eligibility for next month’s disability assistance. For example, income received in September must be reported by October 5, and it affects the November assistance.

Section 2 and 4 of Schedule A outlines the maximum allowable rate of support and shelter for the size of the family unit before net income deductions. For a sole recipient with PWD designation, the rate of support is \$983.50, and the rate of shelter is \$500 for a total of \$1483.50.

Schedule B of the Regulation describes how to calculate net income:

- Section 1 lists the types of income that are exempt from the net income calculation and says that a family unit’s net income includes all earned and unearned income, except for the permitted exemptions and deductions under Schedule B. Money received from WorkSafe BC for Loss of Function and Vocational Rehabilitation is not listed as exempt income under this section.
- Section 3 explains the annual exemption for “qualifying income,” which includes “earned income” from employment and “unearned income” that is compensation

paid under section 191 or 192 of the *Workers Compensation Act* (also referred to as temporary disability or wage loss). As the Appellant's loss of function and vocational rehabilitation is not earned income or paid under the noted sections of the *Workers Compensation Act*, these exemptions do not apply.

- Section 6 (a) says the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits and essential operating costs of self-contained rental suites.
- Section 7 lists unearned income that is exempt for the purposes of calculating net income. Money received from WorkSafe BC for Loss of Function and Vocational Rehabilitation is not listed as exempt income under this section.
- Section 8 explains the permitted exemptions for student financial assistance. This does not apply to the Appellant's vocational rehabilitation benefits from WCB because these benefits are not provided by British Columbia Student Assistance Program, the Canada Student Financial Assistance Act or a similar government jurisdiction.

Appellant's Position

The Appellant's position is that the Ministry is discriminating against him by not treating his WorkSafe BC September and October 2023 reported income for Loss of Function and Vocational Rehabilitation as exempt from deduction from his monthly disability assistance, even though Ministry workers had told him that this WorkSafe BC income would be exempt from deduction.

The Appellant, through his advocate, also asks the Ministry to treat the Appellant's monthly income from WorkSafe BC as "student financial income" under the Regulation, Section 8 of Schedule B.

Ministry's Position

The Ministry's position is that the Regulation, Schedule B, Schedule 1 does not list income received from WorkSafe BC for Loss of Function and Vocational Rehabilitation in the list of exempt income types. The Ministry is required to follow the Regulation and cannot treat the Appellant's WorkSafe BC income for Loss of Function and

Vocational Rehabilitation as exempt from deduction from his monthly disability assistance.

The Ministry also cannot treat the Appellant's Loss of Function and Vocational Rehabilitation income from WorkSafe BC as student financial assistance income because Section 8 of the Regulation specifies the permitted exemptions for student financial assistance and WorkSafe BC income is not included as a permitted exemption.

Panel Decision

Under Section 1 of the Regulation, "unearned income" means any income that is not earned income and includes money or value received from workers' compensation benefits and disability payments or pensions.

Schedule B Section 1 of the Regulation lists the types of income that are exempt from the net income calculation and says that a family unit's net income includes all earned and unearned income, except for the permitted exemptions and deductions under Schedule B. Money received from WorkSafe BC for Loss of Function and Vocational Rehabilitation is not listed as exempt income under this section.

In order for the Appellant's September and October 2023 WorkSafe BC income for Loss of Function and Vocational Rehabilitation to be treated as exempt income, this type of income must be listed as a permitted exemption under Schedule B Section 1 of the Regulation. As WorkSafe BC's Loss of Function and Vocational Rehabilitation income is not listed as a permitted exemption, the Regulation does not allow the Ministry to exempt this income from the Appellant's disability allowance.

"Student Financial Assistance" is defined in section 1 of the Regulation as funding provided to students under the British Columbia Student Assistance Program, the Canada Student Financial Assistance Act, or a similar program provided by another province or jurisdiction. Loss of Function and Vocational Rehabilitation income from WorkSafe BC is not included under the identified assistance programs for student loans and thus, section 1 of the Regulation does not apply to the Appellant's situation.

In summary, none of the prescribed exemptions may be applied in the Appellant's case according to the Regulation.

Conclusion

The panel confirms the Ministry's reconsideration decision. The Appellant's WorkSafe BC Loss of Function and Vocational Rehabilitation income is not exempt under the Regulation, and WorkSafe BC's Loss of Function and Vocational Rehabilitation income does not apply to Section 8 of the Regulation for student financial assistance.

The Appellant is not successful in his appeal.

Appendix A

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION:

Definitions

1 (1) In this regulation:

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the *Canada Student Financial Assistance Act*, or
- (c) a similar program provided by another province or jurisdiction;

"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 as defined in the *Real Estate Development Marketing Act*;
- (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

29 or 30 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 prescribed under the Forms Regulation, B.C. Reg. 87/2018:

- (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 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Schedule A - Disability Assistance Rates

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly support allowance

2 (0.1) For the purposes of this section:

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

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

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

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

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

(a.1) Repealed [B.C. Reg. 193/2017]

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 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

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

Schedule B- Net Income Calculation

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];
- (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; the basic child tax benefit;
- (v) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vi) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] or 8.3 [*renter's tax credit*] of the *Income Tax Act* (British Columbia);
- (vii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (viii) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (ix) 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;
- (x) 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) post adoption assistance payments provided under section 28 (1) or 30.1 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.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (a) \$1 250, in the case of a family unit that includes only one recipient,
- (b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 500, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5); **"qualifying income"** means

(a) earned income, except the deductions permitted under section 2, and

(b) **unearned income that is compensation paid under section 191 [temporary total disability] or 192 [temporary partial disability] of the Workers Compensation Act;** **"qualifying month"**, in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and

(b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

(a) forms during the calendar year, and

(b) includes at least one person who

(i) is designated as a person with disabilities, and

(ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

(a) the qualifying income of the family unit for the qualifying month;

(b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

(a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);

(b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

(a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of

(i) the base amount for the family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of

(i) the base amount for the recognized family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

(a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is

(i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if

(A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or

(B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;

(b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;

(c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is

(i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.

(6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:

(a) in the case of a recipient who is not designated as a person with disabilities, the product of

(i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and

- (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;
 - (b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of
 - (i) nil, and
 - (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
 - (A) by deducting the qualifying income of that last family unit in that last qualifying month;
 - (B) by deducting the product of
 - (I) the amount specified in paragraph (a) of the definition of "base amount", and
 - (II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;
 - (c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of
 - (i) the amount specified in paragraph (a) of the definition of "base amount", and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.
- (7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of
- (a) nil, and
 - (b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:
 - (i) by deducting the qualifying income of the family unit in that last qualifying month;
 - (ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded
 - (A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month,

by deducting the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made

(A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month,

by adding the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iv) by deducting the product of

(A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and

(B) the number of calendar months after that last qualifying month and before the index qualifying month.

(8) Repealed. [B.C. Reg. 268/2020]

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 Federal Department of Veterans Affairs 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).]

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.

APPEAL NUMBER 2024-0030

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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2024/02/21

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2024/02/21

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/02/21