

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision, dated January 15, 2024 (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 January, 2024 because the Appellant’s Canada Pension Plan (“CPP”) disability benefits in November 2023 exceeded the the Appellant’s rate of assistance under Schedule A to the Employment and Assistance for Persons with Disabilities Regulation (the “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

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, and 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 letter to the Appellant from Service Canada, dated October 28, 2023, indicating that the Appellant was eligible for a monthly amount of disability assistance of \$731.05 and a retroactive payment of \$1,462.10 in respect of CPP disability payments; and
- the Appellant's Request for Reconsideration, dated December 22, 2023.

With the Appellant's Notice of Appeal, dated January 23, 2024, the Appellant included a handwritten letter in which he stated the following:

- the Appellant did not understand how CPP disability cheques for September and October 2023 could be called income for November 2023 because of the delay in them being sent to him;
- the Appellant believed that if he had gotten the cheques a week earlier, on October 31, 2023, the amount of the cheques would not have been counted as income for November;
- the Appellant believed that the Ministry should have been "topping off the cheques for September and October", ;
- the Appellant had been part of a call with a Ministry representative and a CPP representative to get the Appellant's consent to release information to each other;
- the Appellant was not aware until the last week of October that his CPP disability payment was going to be \$731.05 per month;
- the Appellant was advised by a representative that he needed to apply for disability assistance with the Ministry to "top up" his CPP disability;
- the Appellant met with a worker from the Ministry at a local church, to help him complete forms for applying for disability assistance;
- the Appellant initially had only applied for CPP disability benefits and not disability assistance through the Ministry and did not realize that he needed to apply for both;
- the Appellant would have received \$4,450.50 for the months of September 2023 through November 2023 had he applied for disability assistance through the Ministry only and not CPP disability;

- the Appellant was told that, if he lost his appeal, he would need to repay \$4,535.50 to the Ministry but was subsequently told that the amount could be repaid at a rate of \$20.00 per month, which the Appellant later discovered was not correct as his disability assistance would be ending when the Appellant turned 65 and his debt to the Ministry would be transferred to Canada Revenue Agency who were not bound to collect just \$20.00 per month;
- the effect of the Ministry's decision was that the Appellant was not even entitled to the CPP disability assistance that he received for September and October 2023 as it was included in his November income and served to reduce his disability assistance for January 2024 to nothing;
- the Appellant would have received \$7,417.50 had he applied for disability assistance from the Ministry at the outset and received it from September 2023 through January 2024;
- the actual amount that the Appellant received for those months was \$4,796.65;
- the Appellant only received \$1,120.00 for October and November 2023 from the Ministry but should have received \$1,504.90, being the difference between the disability assistance in the amount of \$1,483.50 and the CPP disability benefits in the amount of \$731.05 for each of October and November 2023;

The Hearing

The Appellant

The Appellant did not attend the hearing and, after determining that the Appellant had been provided with notice of the date and time of the appeal, the hearing of the appeal proceeded in the Appellant's absence as permitted by section 86(b) of the *Employment and Assistance Regulation*,

The Ministry

At the hearing of the appeal, the Ministry reiterated its position that CPP disability benefits are deductible, dollar for dollar, from disability assistance, in accordance with the Regulation. Pursuant to section 11 of Schedule B of the Regulation, this includes retroactive payments of CPP.

The Ministry noted that the Appellant declared having received \$2,193.15 in CPP disability benefits in November 2023. This amount is deductible from the disability assistance for which the Appellant is eligible in the month of January 2024. As the amount of disability assistance for which the Appellant was eligible in January 2024 of \$1,483.50 was less than

\$2,193.15, the Appellant was deemed not eligible for any disability assistance in January 2024.

The Ministry noted that the Appellant had received the full amount of disability assistance for which he was eligible in December 2023 and the full amount of regular income assistance for which he was eligible in November 2023. The Appellant's file with the Ministry was not opened until October 27, 2023, and therefore the Appellant was not eligible for any assistance prior to November. The Ministry noted that, because the Appellant had received a lump sum in November 2023 that was far in excess of the amount of the Appellant's eligibility for disability assistance in January 2024, the amount of disability assistance that was deductible was less than the amount that would have been deductible had the Appellant received CPP disability benefits in September, October, and November, instead of a lump sum for September through November in November 2023.

The Ministry confirmed that it did have outreach workers who worked with various community groups and that that Appellant's statement about having met with a Ministry worker outside of a Ministry office was consistent with that program.

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 January 2024 because the CPP disability payment to the Appellant in November 2023 exceeded the Appellant's rate of assistance under Schedule A to 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:

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

The description of what types of CPP benefits must be included in the calculation of a recipient's net income is broad and all-encompassing. For example, the definition does not exclude CPP disability benefits. In the result, the CPP disability benefits received by the Appellant in November 2023 in the total amount of \$2,193.15 must be included in the calculation of the Appellant's net income in the month that they were received (in this case, November 2023), unless they otherwise qualify under the other exemption and deduction rules set out in Schedule B.

Schedule B to the *Regulation* 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. To note,

the only types of CPP benefits that are exempt from inclusion in the calculation of net income under section 1(a) of Schedule B to the Regulation are the following:

- (xivii) orphan's benefits under the *Canada Pension Plan Act* (Canada); and
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*.

Neither of these are applicable to the CPP disability payments received by the Appellant and, in the result, the Appellant's CPP disability benefits are not exempt.

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.

Section 3 refers to qualifying income which is income that is earned or, in the case of benefits paid under section 191 or 192 of the *Workers Compensation Act*, unearned income. Again, the Appellant's CPP disability benefits do not fall under either of these categories.

Section 6 sets out that the only deductions from unearned income are:

- (a) any income tax deducted at source from employment insurance benefits; and
- (b) essential operating costs of renting self-contained suites.

Again, neither of these items applies to the Appellant's CPP disability benefits.

Section 8 refers to education related income which, again, is not relevant to the Appellant's CPP disability benefits.

Only section 7(e) of Schedule B, references CPP benefits at all; in that section, the portion of CPP benefits that is calculated by a specific formula in the section is exempt.

That formula is a function of tax credits that are deductible under the *Income Tax Act*. The amount that would be exempt is 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;

As item B in the above equation is 1/12 of the basic personal exemption which the Appellant is entitled to claim and 1/12 of the Appellant's basic personal exemption is greater than the amount of CPP disability benefits the Appellant receives, A-B in the formula set out in section 7(e) of Schedule B to the Regulation is \$0.00 in the Appellant's case.

While the Appellant expressed concerns about why the CPP disability benefits for the months of September through November were paid in one lump sum in November 2023, there is some merit to the Ministry's submission that had the Appellant not received CPP disability benefits retroactively, he would have had more of his disability assistance and regular income assistance deducted overall. For example, had the Appellant received his regular CPP disability benefits of \$731.05 in each of September, October, and November, the Appellant would have been required to disclose those amounts on his monthly reports for each of the months of October, November, and December where he was a recipient of disability assistance, pursuant to section 29 of the Regulation. There is an all but identical requirement to report for recipients of regular assistance, pursuant to section 33 of the *Employment and Assistance Regulation*.

As the Appellant did not yet have an active file open with the Ministry when he would have been required to file a monthly report for September, he did have an active file with the Ministry when the November monthly report was required to be filed and any income received in October, including any CPP disability benefits, would have been deductible from his December assistance. However, as section 11 of Schedule B expressly requires the inclusion of retroactively paid CPP benefits in the calculation of a recipient's net income, the question appears to be a largely academic one and because all of the Appellant's CPP disability benefits for the months of September 2023 to November 2023 were received by the Appellant in November 2023, the deduction for January 2024 was for \$1,483.50 or all of the Appellant's income assistance for January 2024, as the Appellant's

November 2023 income exceeded the amount of assistance for which he was eligible in January 2024.

While the Appellant set out in the Notice of Appeal that he felt that he did not receive the disability assistance for the months of September, October, and November 2023, that he was entitled to, this would appear to be the result of the Appellant not having had an open file with the Ministry until October 27, 2023. In short, the Appellant was not entitled to regular income assistance or disability assistance until November 2023. While it is regrettable if this delay was caused by the failure of an outreach worker to advise him to apply for disability assistance, that the Appellant did not receive \$1,483.50 for each of the months of September, October, and November 2023 is not the result of his CPP benefits for those months having been paid in one lump sum in November 2023.

Conclusion

The panel notes that it is unfortunate if the Appellant was not advised to apply for disability assistance at the same time as he applied for CPP disability benefits. However, that appears to have been the result of the advice of a Ministry outreach worker and not by the operation of the Regulation.

Additionally, had deductions of CPP disability benefits been made from his income assistance in November and his disability assistance in December, as may have occurred had he received his CPP disability for September and October 2023 in those months, the Appellant might have had more monies deducted from his assistance than he did, even if he also would likely not be in an overpayment situation.

In view of the fact that the legislation requires the inclusion of all of the Appellant's CPP disability benefits to be included in the calculation of his net income, including, expressly any backdated CPP benefits, the panel finds that the Ministry was reasonable in its determination that all of the CPP disability benefits received by the Appellant in November 2023, notwithstanding that a portion of these were retroactive payments, were in excess of his entitlement to disability assistance and, accordingly, made the Appellant ineligible for disability assistance in January 2024.

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

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (a) \$1 350, in the case of a family unit that includes only one recipient,
- (b) \$1 620, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 700, 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;

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.

section 7

...

(1) The following unearned income is exempt:

...

(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;

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.

Backdated CPP treated as unearned income

11 (1) In this section, "**pension benefit**" means a pension or other payment under the *Canada Pension Plan* (Canada).

(2) If

- (a) disability assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and
- (b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the *Canada Pension Plan* (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month

the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

2024-0036

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)

2024/02/22

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2024/02/22

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2024/02/22