

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) reconsideration decision dated January 15, 2024, which determined that the Old Age Security (“OAS”), Guaranteed Income Supplement (“GIS”) and Canada Pension Plan (“CPP”) income the Appellant’s spouse received in November 2023 must be deducted from their January 2024 disability assistance.

The Ministry also determined the income that the Appellant declared from earned income was applied to her annual earnings exemption and is not at issue.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, sections 1,9 and 24, Schedules A and B

(Relevant Legislation follows decision in Appendix A)

Part E – Summary of Facts

The hearing was held in person and by telephone on March 13, 2024. The Appellant, her spouse, and an advocate attended in person, with the Ministry attending by telephone.

The appellant receives disability assistance as a family of two, where both adults are Persons with Disabilities (PWD), with one being over the age of 65.

Information Before the Ministry at Reconsideration

- Monthly Report dated December 4, 2023, submitted by the Appellant, declaring that her spouse received \$6,094.91 from OAS, and \$370.78 from CPP and she received \$1734.51 employment income. There is a written explanation that \$4,283.75 is from “retroactive owed GIS.”
- Letter from Service Canada dated October 30, 2023. The letter explains that the Appellant’s spouse (“the spouse”) was approved for the renewal of the GIS for the 2023-2024 payment year based on his income from 2022. The letter calculates that the spouse is eligible for \$817.45 per month with a retroactive amount owing of \$3,285.36. In addition, they calculate that the spouse is owed \$990.10 GIS for the period of June 2023 (2021 income).
- Copy of a bank statement from November 2023 shows deposit dated November 28, 2023 from OAS \$1,386.63 and CPP \$370.78 and a November 1, 2023 deposit of \$4,283.75 from OAS.
- Paystubs for pay ending dates November 3 and 17, 2023, show total net income for November as \$1,734.51.
- Request for Reconsideration submitted by the Appellant on December 28, 2023. The Appellant’s spouse wrote (in summary):
 - He has to pay for daily home care, which amounts to \$1,023 per month, and was denied home care by the health authority.
 - He has been recovering from an amputation for almost two years.
 - His daily bathing and bandage change takes one hour per day.
 - He requires assistance in the shower to avoid falling over.
 - It is not fair, nor right, to be denied home care and it is not his fault that the government has dragged this out for months. During this time, he still had home care to pay for and had to go into debt to pay for it.
 - “You are causing both of us hardship.”

Information Submitted After Reconsideration

- On the Notice of Appeal form the Appellant wrote: “The lump sum payment that my husband received was retroactive. He is an amputee that requires daily home care which he pays for.”
- The Appellant submitted email correspondence on February 1, 2023. The email consisted of communications between the spouse and the local health authority which provides home support in their area. The emails are dated April 25, 2022, and relate to the spouse requesting home support because he is struggling with managing his personal care, which the specialist said is required. The spouse also highlights that because home support is being withheld, it is triggering his PTSD symptoms.
- The response from home support on April 25, 2022 seems to indicate that they had not received any doctor’s orders regarding home support and that they are not able to grant the request for assistance with bathing once a week due to previous incidents. They add that the spouse can be set up with supplies for an independent sponge bath. Further, the writer adds that now that the spouse has a dressing on the wound, he can get into a shower and not worry about getting the dressing wet. The spouse was informed that if a shower bench or seat is required, to inform the health authority because it can be done through Red Cross rental.
- An email from the health authority to the spouse on April 27, 2022 acknowledges receipt of the doctor’s orders regarding home care. The writer indicates that they are not able to provide a shower in the Appellant’s home weekly, as requested. They informed the doctor of this decision, and the doctor requested that the spouse to please stop asking about the referral for home care.
- On February 14, 2024, the Appellant made an additional submission. This submission included the same email chain as provided on February 1, 2024, as well as a copy of an email they sent to the spouse’s mental health counsellor. This email requested that the counsellor provide a letter of support stating that the spouse was denied service from the health authority for home care and how it has impacted them. The spouse re-stated his medical condition, and the treatment and care that he received over the past several years. However, after home care stopped providing service, he had been paying two employees to provide care but when the GIS payments stopped coming in, he was not able to pay them. Because the home care workers knew that a retroactive payment from GIS would be received, they continued providing service, expecting payment when the retroactive payment came in. When the retroactive payment came in, the spouse paid the home care workers, not expecting that the money would be deducted from the Appellant’s disability assistance.

- An additional submission was received on March 5, 2024. This submission was a letter of support, dated March 4, 2024, from the Appellant's counsellor. The letter confirmed that the spouse had several counselling sessions between August 2020 and June 2022 and that the topic of how having to pay for his own private health care to address their medical condition often came up. The writer adds that because the spouse's retroactive GIS was deducted from the Appellant's disability assistance it has created financial hardship for them.

At the hearing,

- The Appellant explained that her spouse is over 65 years of age and receives his own pension income from OAS, CPP and GIS, which is deposited into his bank account. She works and receives disability assistance, which is deposited into her own bank account. The Appellant was very surprised when she did not receive a disability cheque in mid December, just before Christmas. She did not receive any notice that there would be no disability assistance deposited.
- While her spouse was in hospital last year for five months, she had to pay for everything out of her cheque, because she received less from the Ministry. She added that she had to sell belongings to survive.
- The Appellant explained that the spouse's GIS stopped coming in June 2023 and it took until November 2023 for him to receive his retroactive GIS. During that time, he had to borrow money to pay his home care workers, or they worked with no pay until the retroactive payment came in. When it was received, the entire amount went to pay off money borrowed, and to pay the home care workers.
- The Appellant considers that it is not right that the spouse's GIS was deducted from her disability assistance. It might be legally right, but it is not morally right, and advance notice should have been given to them that no disability assistance would be deposited.
- The Appellant explained her difficulties with obtaining a driver's license, due to her medical condition, and the expenses she has incurred over the past few months to try to obtain it. She adds that because of her varied hours at work, local bus services and taxi services are inadequate.
- The Ministry asked the Appellant if she was aware that the spouse's pension income was deducted from her disability assistance. The Appellant explained she was not always

certain of how much she would receive because it varied every month. She added that they are very diligent about declaring all their income on their monthly report, but she really doesn't understand how it works. The Ministry explained that they are considered a family unit and their disability assistance is calculated based on there being two people in the family, with disability designation and that all income is then considered.

At the hearing,

- The Ministry reviewed the legislated definition of “unearned income” versus “earned income”. They explained that all pensions, which include OAS, GIS and CPP, are considered unearned income and are deducted dollar for dollar. The Ministry added that the only deductions permitted from unearned income are for income tax, EI deductions or essential operating costs of renting self-contained suites.
- The Ministry reviewed that legislation allows some exemption for back-dated CPP income, however, the Appellant's income is from GIS, which does not have any exemption.
- The Ministry explained that there is no dispute that the GIS income was received, or when it was received. The lump sum amount was added into the total pension income that was declared for November 2023 and then deducted from the January 2024 disability assistance.
- The Ministry explained that deducting GIS income is not optional, and they have no authority to disregard legislation which indicates it is unearned income with no exemption.
- The spouse asked the Ministry why his income must be deducted from the Appellant's disability assistance. The Ministry responded by reviewing how they are treated as a family unit, that they are one case, and the cheque is sent to whichever adult is set as the primary client. The disability assistance is then calculated based on the rates set, less any income. They explained that during the months that the spouse did not receive GIS income, the amount of disability assistance paid during that time increased. Therefore, the family received a higher amount from the Ministry from July to December 2023 because when the GIS retroactive payment was received it was only deducted from one month.

- The advocate asked the Ministry whether any of his health-related expenses can be considered exempt. The Ministry reviewed the legislation regarding exemptions for unearned income. This section indicates that “disability-related costs” means disability-related costs related to section 12(1) of the legislation. This section of legislation refers to assets held in trust for a person with disabilities, which means any income that is withdrawn from the trust and then used for disability-related expenses would be exempt. This is not the Appellant’s circumstance with the spouse receiving retroactive GIS, not income coming from a trust. The Appellant added that she does have assets held in trust, but she is not able to access that until she reaches 60 years of age.
- The Appellant asked the Ministry why she did not receive advance notification that there would be no disability assistance for January 2024. The Ministry explained that when the monthly report was received, it was noticed that there was a discrepancy between what was declared and what was actually received so a phone call was made to the Appellant. There was no response, so a letter was sent asking for the monthly report to be amended. The Appellant stated there was a small discrepancy, the form was amended and then returned to the Ministry. The Ministry explained that there is no automatically generated letter to inform what amount would be paid out the following month.

Admissibility of Additional Information

The panel accepted the Appellant’s written submissions and oral testimony provided at the hearing as evidence under section 22(4) of the *Employment and Assistance Act*, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry had no objection to the admissibility of this evidence. The Ministry provided no written submission and their oral testimony consisted of review and clarification of the decision.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry decision that the OAS, GIS and CPP income the Appellant's spouse received in November must be deducted from their January 2024 disability assistance is reasonably supported by the evidence or is a reasonable interpretation of the legislation.

Appellant's Position

The Appellant's position is that the spouse's retroactive GIS income should not be deducted from their disability assistance because it was used for health-related expenses. Further, it is his income, not hers, and it should not be deducted from the Appellant's disability assistance.

Ministry's Position

The Ministry's position is that GIS income is legislatively listed as unearned income, and legislation requires that it be deducted from the disability assistance rates for a family unit. In the Appellant's circumstance, which is two people with disability designation, with one person over 65, the disability rate for support and shelter is \$2,548.50. The amount declared totalled \$6,032.87 for OAS, GIS and CPP. Because the November 2023 net income must be deducted from January 2024 assistance, and it exceeds the disability assistance rate, the family is not eligible for January assistance.

Panel's Decision

The legislation that pertains to how income from the Guaranteed Income Supplement is considered can be found in the Regulation.

Section 1, defines "unearned income" as

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

...

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

...

(u) Federal Old Age Security and Guaranteed Income Supplement payments.

It further stipulates in (d) that all unearned income must be included, except for the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

When calculating the net income of a family, section 1 of Schedule B allows for exemptions. The panel reviewed all the exemptions listed in section 1 and did not find CPP, OAS, GIS or retroactive GIS payments are listed.

The Appellant argues that because her spouse used his retroactive GIS payment to pay for health-related costs, that it should be exempt. Section 7 of Schedule B allows for certain exemptions for unearned income. The panel reviewed this section and finds that it refers to exemptions that are permitted when money is removed from a trust, which has been set aside for disability-related costs. This is not applicable in the Appellant's circumstance because the GIS income did not come from a disability-related trust.

Section 3 allows for exemptions for "qualifying income". This means earned income and unearned income that is compensation paid under the *Workers Compensation Act*. The income at issue is GIS income, which is defined as unearned income not earned income, and is not compensation paid under the *Workers Compensation Act*. Section 3 is not applicable in the Appellant's circumstance.

Section 6 allows for deductions from unearned income. It lists the only deductions permitted from unearned income are for income tax deducted from employment insurance benefits and essential operating costs of renting self-contained suites. This section is not applicable for income from GIS.

Section 8 allows for the Minister's discretion to exempt educated related unearned income. This section is not applicable for income from GIS.

Because GIS income is specifically identified in section 1 of Schedule B as unearned income, and none of the exemptions to unearned income apply, the panel finds the ministry was reasonable to determine that GIS income must be considered unearned income and must be deducted from the family unit's disability assistance.

The Appellant argues that her spouse's income should not affect her disability assistance. That his income is his, and her income is hers. Schedule A sets out the rates that are payable to a family unit that includes two people who both have disability designation, with one person being over the age of 65. The Appellant and her spouse do not dispute they are a family unit. The panel finds that using this section of Schedule A is applicable, in the Appellant's circumstance. At the hearing, the Ministry explained, as an example, that when

the spouse's GIS was not paid to him from June to October, the amount of disability assistance the Appellant received increased for those months and it was only deducted for the one month when it was received. This helps explain that the total amount of disability assistance they receive is based on the income declared by both the Appellant and her spouse.

Section 24 sets out that the amount of disability assistance that may be provided is not more than the support and shelter listed in Schedule A minus the family's net income determined under Schedule B. In the Appellant's circumstance, the amount of support for the family unit is \$1853.50, and shelter is \$695 for a total of \$2,548.50.

In November, the Appellant received earned income, which is not at issue in the appeal. The spouse received \$6,094.91 for OAS/GIS and \$370.78 for CPP for a total of \$6,465.69 unearned income. The monthly report and letters regarding the retroactive GIS payment confirm the amount received, and the Appellant does not dispute the amount received. Therefore, the panel finds the Ministry was reasonable to determine that because the family's net income for November exceeded the disability rates set, that there is no eligibility for January assistance.

In summary, there are no exceptions for unearned income that provide the Appellant or her spouse with the exemptions they seek.

Conclusion

The panel finds that the Ministry's determination the OAS, GIS and CPP income the Appellant's spouse received in November must be deducted from their January 2024 disability assistance was a reasonable application of the legislation. The panel therefore confirms the Ministry's decision. The Appellant is not successful on this appeal.

APPENDIX A
RELEVANT LEGISLATION

Regulation**Definitions**

1 (1) In this regulation:

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

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

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

Limits on income

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

Amount of disability assistance

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

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

Schedule A Disability Assistance Rates

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.

Monthly support allowance

2

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
4	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with disabilities	1853.50

Monthly Shelter Allowance

4

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter \$
1	2 person	695

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

- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, Todd Edward Ross et al. v. Her Majesty the Queen;
- (xii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, Raymond Michael Toth v. Her Majesty the Queen
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) and (xvii.1) Repealed. [B.C. Reg. 99/2023, app. 2, s.3(a)]
- (xviii) financial assistance payments provided under Part 6 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program;
- (xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxx) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxii.1) a rental housing benefit provided under the *Rental Housing Benefit Act* (Canada);
- (xxxii.2) a dental benefit provided under the *Dental Benefit Act* (Canada);
- (xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xlv) a BC early childhood tax benefit;
- (xlv.1) a BC child opportunity benefit;
- (xlv.2) a BC family benefit
- (xlvi) child support;
- (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) compensation paid or payable under Division 5 [*Compensation in Relation to the Death of a Worker*] of Part 4 [*compensation to Injured Workers and Their Dependant*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165(1) of that Act;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a

settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

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

(liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(lviii) and (lviv) Repealed. [B.C. Reg. 99/2023, App 2, 32(a)]

(lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the Department of Public Safety and Emergency Preparedness Act (Canada),

(lxi) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program;

(lxii) a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the Insurance (Vehicle) Act and the plan operated under that Act;

(lxiii) an amount that is paid or payable, as a single payment or series of payments, as follows:

(A) the amount is paid or payable by a person who is or was a landlord, owner or manager, or a person who holds or held a similar position, in relation to leased, rented or licensed residential premises, whether or not the Residential Tenancy Act or the Manufactured Home Park Tenancy Act applies to that premises;

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

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

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

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

(lxviii) a voted support payment;

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

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

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

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Annual exemption — qualifying income

3 (1) In this section:

"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.

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.

Minister's discretion to exempt education related unearned income

8 (not applicable)

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.

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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
Janet Ward

Signature of Chair

Date (Year/Month/Day)
2024/03/15

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2024/03/16

Print Name
Carmen Pickering

Signature of Member

Date (Year/Month/Day)
2024/03/17