

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) Reconsideration Decision dated 10 April 2024, which determined that the appellant does not qualify for disability assistance due to excess income as per the Employment and Assistance for Persons with Disabilities Regulation, sections 1, 9 and 24, Schedule A, sections 2 and 4, and Schedule B sections 1, 2, 6 and 7.

Specifically, the ministry determined that the appellant submitted an income report for his April benefit month that included income from 1) interest from a personal loan and 2) Canada Pension Plan (“CPP”). The ministry determined that the funds were unearned income and were in excess of what was allowed under the Regulation, which meant that the appellant was not eligible for disability assistance for April 2024.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “Act”) section 3.

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”) sections 1, 2.01, 9 and 24.

Schedule A, sections 1, 2 and 4

Schedule B, sections 1, 6, and 7

Part E – Summary of Facts

The hearing took place on May 29, 2024, as an in-person hearing.

Evidence at the time of reconsideration

In the Request for Reconsideration, the appellant submitted:

- 1) A letter dated March 25, 2024 which described a loan he had made to a “close friend”. The appellant had been receiving payments for the loan, which had been “reported ...to the Ministry over time”. The appellant also stated that, prior to reporting the payments, he “had confirmed from the Ministry if these payments were exempt from our benefits”, and the Ministry “confirmed that because these payments were towards a personal loan, from myself to a friend, ... they were 100% exempt from my benefits”. The appellant stated that these instructions were followed “to a tee”, and he was very disappointed when his normal benefits were not paid on March 20, 2024 for April 2024;
- 2) A Monthly Report submitted to the ministry, dated March 5, 2024, which reported that in February 2024 the appellant received income of \$20000.00 under the category of “All other income/money received” and his spouse received income of \$1268.16 under the category of CPP. In the explanation section, the appellant stated: “ payback balance of loan - \$1,500 interest payed to me, from balance of loan payed back (see attachments) – interest payment from loan is deemed as an earnings exemption, which was confirmed earlier from Ministry”;
- 3) A chequing account statement stamped 20 February 20, 2024, which includes various withdrawals and deposits, with a highlighted deposit on February 1, 2024 for \$20,000.00
- 4) A copy of a bank draft for \$20,000 to the appellant from his friend dated February 1, 2024.
- 5) A Promissory Note dated February 19, 2021, to the appellant from his friend, signed by both, for \$21,300.00 for the “purpose of incurred expense, over time”. It also states that the loan will be “paid back in full as soon as the opportunity arises”.
- 6) A Promissory Note dated February 1, 2024, which states the “up-to-date balance of the loan was (\$18,500) Today, I am paying back (\$20,000.00). Which is the total balance of the loan, plus (\$1,500.00). Which is interest on the loan. The current balance is now (\$0)”.
- 7) A Bank statement dated February 9, 2024, for a line of credit of \$25,000.00

The request also included a statement from the appellant that he called the Ministry to discuss the loan payment and asked if the interest payment on the loan was exempt from

his benefits and was “specifically told... that it was exempt because it pertained to a personal loan, which the payments were exempt.”

According to the Ministry’s decision, which is not disputed by the appellant, the following is a chronology of events:

The appellant submits a monthly report of his February 2024 income on March 5, 2024 for his April 2024 benefit month. This included \$20,000 received for a loan repayment, with \$1,500 as interest, and his spouse reported \$1,268.16 from CPP.

The ministry explained to the appellant on March 20, 2024 that he was ineligible for April benefits due to income in excess of that allowed under Section 9 of the Regulation and denies the appellant benefits for April 2024.

The appellant initiated a Request for Reconsideration on March 25, 2024.

The ministry completed its review of the Request for Reconsideration on April 10, 2024.

In the Reconsideration decision, the ministry found that:

- 1) The appellant’s income from loan interest and CPP benefits met the definition of unearned income under Section 1 of the Regulation.
- 2) The income reported for February 2024 of \$1500 (loan interest) and \$1268.15 (CPP) is more than the \$2,533.65 rate of assistance under Schedule A and “you are not eligible for April 2024 disability assistance in accordance with Section 9(2) of the EAPWD Regulation”.

Evidence received after the Reconsideration Decision

The appellant submitted a Notice of Appeal on April 16, 2024, stating that he was told by the Ministry that the interest payment of \$1,500 “was exempt from our benefits” and that he had “followed his instructions to a tee”. Also, it was not fair that the Ministry had denied their benefits, “solely because of receiving this interest payment. Is not fair!”.

Testimony at the hearing

The appellant spoke about his situation. In 2013, he had cancer and had a major organ removed and started receiving Persons with Disabilities (“PWD”) benefits. He subsequently had degenerative back disease, could not walk and required surgery and physiotherapy. In 2018, he experienced angina and had an angioplasty. He has diabetes type 2 and liver

disease, and requires nine pills daily. Due to his health, he cannot work either part or full time.

His wife suffered an injury at work and is on PWD. She cannot work.

The appellant and his wife live below the poverty line and rely on PWD assistance. They use a Line of Credit from time to time to survive and rely on the PWD assistance to make monthly payments and pay off this debt. Not receiving their PWD assistance in a month puts them "in a bind" and causes them even more stress.

If there are any questions with payments he has received during the month, the appellant calls the Ministry to confirm how to include it in his monthly report. He has done that in the past with GST payments and other payments.

In this case, and just as he has done in the past, he called the ministry assistance line and spoke to a man who advised him that payments from a personal loan were exempt and would not affect his monthly PWD assistance.

He does not understand why he should suffer due to a mistake by the ministry.

The appellant also submitted a letter dated May 28, 2024, signed by his friend, which stated: "Regarding the promissory note, dated February 1st, 2024. Besides the (\$1,500) paid as interest on the loan. This amount is a special gift as well, for [the appellant]. Solely because he has helped me tremendously over time, when I needed financial assistance."

The ministry representative explained the regulations pertaining to unearned income, particularly Section 1 of the Regulation which defines "unearned income" as:

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

Upon questioning, the ministry representative noted that while there were records of two phone calls to the ministry from the appellant on other issues, there was no record of a phone call in which a representative told the appellant that the interest payment was not unearned income.

Admissibility of Additional Information

The panel admitted the appellant's statements provided with the Notice of Appeal, the letter dated May 28, 2024 from his friend regarding the payment being a gift, and his oral testimony about his health as evidence under Section 22(4) of the *Employment and Assistance Act* which allows for the admission of evidence reasonably required for a fair full and fair disclosure of all matters related to the decision under appeal. The ministry representative did not object to the admission of this evidence by the appellant and did not submit additional information during the hearing.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's Reconsideration Decision that determined the appellant was ineligible for disability assistance was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant's payments from the interest payment in February 2024 make him ineligible for April 2024 disability assistance?

Ministry position

The ministry found that the appellant's payments from interest on a personal loan and CPP were "unearned income" according to Section 1 of the Regulation. The ministry stated that the payments were "unearned income" and would be deducted from any disability assistance.

The ministry determined that the appellant's "loan interest income of \$1500 plus [his] CPP income ... is more than the \$2533.65 rate of assistance..." and that he was "not eligible for April 2024 disability assistance in accordance with Section 9(2)" of the EAPWD Regulation".

Appellant's position

The appellant states that he and his spouse complete their monthly reports diligently and when they received a personal loan payment, they relied on information from the ministry when completing the form. The information subsequently proved to be in error and they believe this is "not fair". They "trusted this worker and all his instructions".

As well, the appellant and his spouse live in debt and rely on their monthly PWD payment to pay their line of credit debt and the loan repayment they received "is not extra or unearned income at all".

During the hearing, the appellant also submitted evidence that this loan repayment was a gift from his friend and not interest on a personal loan.

Panel's reasons

Section 1 of the Regulation states that "unearned income" is any income that is not earned income and specifically includes "money received from interest bearing accounts or properties". Payments from CPP are also included under this section as being "unearned income".

The panel notes that the inclusion of CPP as unearned income is not in dispute by the appellant.

The definition section of the Regulation includes money received from “interest bearing properties” as unearned income. While sympathetic to the appellant’s position that he and his spouse were following incorrect advice of ministry representatives, in this case, the panel finds that the ministry has reasonably relied on the monthly report provided to them by the appellant.

The panel finds that the ministry reasonably determined the income received by the appellant from interest on a personal loan and CPP was “unearned income” as stated in the Regulation. In this case, the panel finds that the payment from the personal loan was reasonably determined to be from an interest bearing property.

During the hearing, the appellant provided additional evidence in the form of a signed letter which states that the loan was paid and that the interest \$1,500 is also a “special gift”. The panel finds that “gifts in the form of payment by another person of a debt or obligation” is also defined in the Regulation as unearned income under section 1(y) and that this additional evidence would not impact the finding that payment received was “unearned income”.

Section 9(2) of the Regulation states that a family unit is not eligible for 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 of the Regulation provides that the amount of disability assistance is the amount determined under Schedule A minus the family unit’s net income determined under Schedule B.

In the case of the appellant and applying Schedule A of the Regulation, the appellant’s family may be eligible for total monthly benefits of \$2,533.65. The appellant declared income of \$1,500.00 for interest on a personal loan and \$1,268.15 for CPP in February 2024, which affects their April 2024 benefit month. As noted above, the panel has found that this amount was reasonably found by the ministry to be “unearned income”.

Eligibility for disability assistance is based on net income, not reported income. The panel finds that the ministry acted reasonably in accepting the total amount of the appellant’s

reported income was included when the net income was determined under Schedule B and that none of the deductions for unearned income under Schedule B apply.

In this case, the panel finds that the ministry reasonably concluded that the monthly net income (amounting to \$2,768.15) exceeded the rate of disability assistance for the appellant's family (\$2,533.65) and that the appellant was therefore ineligible for their PWD payment for the month of April 2024.

The panel finds that the ministry applied the relevant legislation reasonably. The ministry's reconsideration decision was reasonably supported by the evidence.

The panel confirms the ministry's decision. The appellant is not successful in the appeal.

Schedule of Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

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

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

1 (1) In this regulation:

"**earned income**" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"**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;

...

(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.

Limits on income

9 (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

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

Amount of disability assistance

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

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

Schedule A

Disability Assistance Rates

Monthly support allowance

(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

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

(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
2	2 persons	\$150	\$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;

...

(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,

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).]

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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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2024/06/01

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/06/01

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/06/01