

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“Ministry”) Reconsideration Decision of April 5, 2024, that determined the Workers Compensation Benefit the Appellant received in February 2024 is not exempt income and must be deducted from the Appellant’s April 2024 disability assistance.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”) Sections 1 and 24

Schedule A, sections 1, 2 and 4

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

Employment and Assistance Act, section 19.1 (f)

Administrative Tribunals Act, section 46.3

Applicable legislation is found in Appendix A.

Part E – Summary of Facts

The Appellant requested a video conference hearing of this appeal. A video conference hearing took place on June 11 at 10 am. The Appellant and her advocate, and all Panel Members were in attendance. The Ministry did not attend the hearing.

Background

The Appellant is a sole recipient with Persons with Disabilities designation. Her file has been open since July 31, 2019.

The Appellant receives \$1535.50 per month for disability assistance and transportation. This amount includes \$983.50 for a support allowance, \$500 for a shelter allowance, and \$52 for a transportation supplement.

The Ministry processed the Appellant's monthly report for April 2024 benefits on March 21, 2024. The Ministry determined the Appellant's Workers Compensation Benefit ("WCB") was not a wage loss benefit and deducted this money from the Appellant's April 2024 disability assistance.

On March 20, 2024, the Appellant phoned the Ministry and asked why she had not received her month disability assistance for April 2024. A Ministry Worker indicated that the Appellant's WorkSafeBC benefit amount had been deducted dollar for dollar from her disability assistance, and she did not qualify for April disability assistance. The Ministry Worker asked the Appellant what type of WorkSafeBC benefits she was receiving, as it would affect whether it was deducted from her cheque or counted towards her annualized earnings exemption. The Appellant was asked to submit a WorkSafeBC letter explaining the type of benefit she is receiving so an assessment could be made.

On March 20, 2024, the Appellant submitted a letter from WorkSafe BC which confirmed she is in receipt of Permanent Partial Disability Benefits issued under Sections 195 and 196 of the *Workers Compensation Act*. The Appellant receives \$1,978.73 each month until she reaches the age of 63.

On March 20, 2024, the Ministry determined that the Appellant is not eligible for April 2024 disability assistance as the money she receives from WorkSafeBC is not exempt and must be deducted from her disability assistance payment.

On March 21, 2024, the Appellant submitted a Request for Reconsideration. She did not submit any further information to the Ministry.

On March 21, 2024, the Appellant received \$1483.50 as benefits under appeal for the April 2024 benefit month.

Additional Information Submitted after Reconsideration

Appellant

The Appellant included a letter with her Notice of Appeal, dated April 5, 2024, asking that disability assistance and medical coverage be continued. The Appellant noted in the letter that she:

- has been on disability for years;
- was a victim of a crime causing trauma and injury and needed a leg brace;
- has had other serious medical issues and requires a sleep apnea machine and mask that must be replaced periodically;
- has had various part-time jobs, the income from which is deducted from disability once the limit is reached, which makes it difficult to survive in winter;
- was no longer able to work at previous employment after an injury four years ago, even though she took vocational training;
- has had to pay for dental work, food, insurance, maintenance, loans, and gas to visit a child in hospital, and
- is just trying to survive and does not understand why disability has been cut off and she is unable to earn money.

The Appellant also sent the Tribunal a letter from her Nurse Practitioner, dated April 3, 2024, along with costing information from a BICPAP supplier. Her Nurse Practitioner attested to the Appellant's condition of hypoventilation and obstructive sleep apnea and her lifelong need for a BICPAP machine. The Nurse Practitioner also expressed her hope that funds can be found to pay for this medically required equipment.

Hearing

Witness Testimony for the Appellant

The Appellant's Social Worker presented testimony as a witness and then acted as an advocate for the balance of the hearing. The Social Worker testified that the Regulation contravenes the Appellant's "right to life" under the Canadian Charter of Rights and Freedoms. Deducting the Appellant's WorkSafeBC Permanent Partial Disability Benefits payment dollar for dollar from her monthly disability assistance leaves the Appellant without enough money to keep a roof over her head and meet her monthly expenses for nutritious food, utilities, transportation, medical supplies, home maintenance and repairs etc. The Ministry's Reconsideration Decision, in effect, deprives the Appellant of her "right to life."

A Panel Member asked if the Social Worker is asserting that the Ministry's policy on deducting Permanent Partial Disability Benefits dollar for dollar is an incorrect interpretation of the *Employment and Assistance for Persons with Disabilities Act* and the Regulation. The Social Worker clarified that they do not view the Ministry's policy as an incorrect interpretation of the Act and Regulation. Rather, the Appellant's Social Worker does not agree with the Province's rules and believes that their legislation needs to be changed so that it does not violate the Appellant's rights under the Canadian Charter of Rights and Freedoms.

When asked if the Appellant had approached the Ministry regarding emergency medical supplements, the advocate said they were having difficulty getting any response from the Ministry.

The Appellant

The Appellant expressed frustration that the Ministry did not notify her of their initial decision to deduct her WorkSafeBC Permanent Disability Pension dollar for dollar from her monthly disability allowance. The Appellant only found out about the Ministry's decision when she checked her bank account and discovered that her usual monthly disability allowance of approximately \$1,500 was approximately \$50 instead. The Appellant contacted the Ministry and was instructed to provide them with documentation to clarify the type of funds being received from WorkSafeBC; this required her to drive out of town to the Ministry's office to provide them with WorkSafeBC documentation. This caused her to spend more money on gas than she could afford. The Appellant also said it was arbitrarily determined that permanent disability payments do not count towards an annual earnings exemption.

The Appellant reiterated the information that she had supplied before, including her April 5, 2024, submission to the Tribunal. She described the nature of her disability and the severity of her additional health issues, including that she briefly died in hospital, was given heart medication, and diagnosed as having Chronic Obstructive Pulmonary Disease. The Appellant also has high blood pressure and takes expensive blood pressure pills daily and has severe

apnea that requires the regular use of a CPAP machine (including an expensive alternative power source in case there is a power outage in her home.)

The Appellant's son is currently hospitalized and she cannot afford to pay for gas to visit him in another community. The Appellant also explained that her home needs some external repairs; if these repairs are not done, she will be in violation of the community's rules and will be evicted. The Appellant stated that this would make her homeless and if this happens "she might as well be dead" because she could not survive on the streets with her various health issues.

The Appellant also would like to have the opportunity to visit her home community for the first time in many years but cannot afford to do so with the additional financial constraints created by the Ministry's Reconsideration Decision.

The Appellant added that she believes that WorkSafeBC made an arbitrary decision to remove her from their Rehabilitation Program and to put her on Permanent Partial Disability Benefits instead. The Appellant wants to work, although her worsening health conditions make that difficult now.

The Appellant's Social Worker has been making applications for the Appellant to receive financial support through other funding programs, largely without success.

The Ministry

The Ministry did not attend the hearing and did not provide any new evidence.

Admissibility of New Evidence

The Panel admits the Appellant's April 5, 2024 letter, the Nurse Practitioner's April 3, 2024 letter, the Social Worker's testimony during the hearing, and the Appellant's testimony during the hearing as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the Panel has weighed that evidence in making its decision as provided under Section 22 (4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The Panel is required to determine if the Ministry's Reconsideration Decision was a) reasonably supported by the evidence, or b) a reasonable application of the applicable enactment.

The Appellant's Position

The Appellant asserts that the Ministry's Reconsideration Decision to deduct her WorkSafeBC Permanent Partial Disability Benefits dollar for dollar from her disability allowance is a violation of her "right to life" as guaranteed under the Canadian Charter of Human Rights and Freedoms. The Ministry's Reconsideration Decision has left her without the ability to meet her household expenses, visit her son, and visit her home community. The Appellant also asserts that it is arbitrarily determined that permanent disability payments do not count towards an annual earnings exemption.

The Ministry's Position

As the Ministry did not attend the hearing, the Panel has relied on the Ministry's Reconsideration Decision to understand its position.

The Ministry asserts that the WorkSafeBC Permanent Partial Disability Benefits that the Appellant receives is considered "unearned income" as set out in Section 1 (j) of the Regulation. Section 6 (a) of Schedule B of the Regulation states that "the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits."

Section 3 of Schedule B of the Regulation permits an annualized earnings exemption for unearned income that is compensation paid under Section 191 temporary total disability or 192 temporary partial disability of the *Workers Compensation Act*. The Appellant receives **Permanent** Partial Disability compensation from WCB and this type of compensation does not qualify for an annualized earning exemption from unearned income. Accordingly, the Appellant's Permanent Partial Disability compensation must be deducted from her monthly disability assistance dollar for dollar.

Panel's Decision

The Panel is required to determine if the Ministry's Reconsideration Decision was supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel does not have any discretion to make a decision that would contradict the applicable legislation.

The Panel notes the assertion by the Appellant's Social Worker that the Ministry's Reconsideration Decision is a violation of her rights under the Canadian Charter of Human Rights and Freedoms. Section 19.1 of the *Employment and Assistance Act* that states that Section 46.3 of the *Administrative Tribunals Act* applies to the Tribunal and accordingly, the Tribunal is without jurisdiction to apply the Human Rights Code.

The Panel also notes the Appellant's assertion that WorkSafeBC erred in removing her from their Rehabilitation program and placing her on a Permanent Partial Disability Allowance. The Panel does not have any jurisdiction over the *Workers Compensation Act*.

Legislation

Unearned Income

Under Section 1 of the Regulation "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from Workers' Compensation benefits and disability payments or pensions. Based on this definition, the Panel finds the Appellant's Permanent Partial Disability compensation is considered unearned income.

Income Exempt from the Net Income Calculation

Section 1 of Schedule B of the Regulation lists the types of income that are exempt from the net income calculation and states that a family unit's net income includes all earned and unearned income, except for the permitted exemptions and deductions under Section 6 of Schedule B of the Regulation.

Section 6 (a) of Schedule B of the Regulation states the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits. The Appellant's Permanent Partial Disability compensation does not meet this criterion.

Section 3 (1) of Schedule B of the Regulation permits an annualized earnings exemption for unearned income that is compensation paid under Section 191 temporary total disability or 192 temporary partial disability of the *Workers Compensation Act*.

The Appellant receives Permanent Partial Disability compensation and the Panel finds this type of workers compensation does not qualify for an annualized earnings exemption.

Calculation of Disability Assistance

Section 24 of the Regulation requires that the Minister calculate the amount of disability assistance provided to a family unit by subtracting the family unit's net income (Under Schedule B) from the rate of income assistance (under Schedule A). The Panel finds the Ministry is following the Regulation by subtracting the Appellant's Permanent Partial Disability compensation dollar for dollar.

The Panel finds that the Ministry has made a reasonable application of the applicable enactment in the circumstances of the Appellant.

The panel is empathetic to the appellant's situation; however, has no discretion to alter the applicable legislation.

Conclusion

The Panel confirms the Ministry's Reconsideration Decision. The Appellant's request that the WorkSafeBC Permanent Partial Disability compensation she received in February 2024 be treated as exempt income is denied because the applicable legislation does not allow for the WorkSafeBC Permanent Partial Disability compensation to be exempt from deduction in the calculation of her monthly disability assistance.

The Appellant is not successful in her appeal.

Appendix A

Applicable Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES 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 as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;

- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

- (a) an order of a court in British Columbia,
- (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
- (c) an agreement filed in a court in British Columbia,
the child is a dependent child of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Schedule A

Disability Assistance Rates

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

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

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

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

Monthly support allowance

2 (0.1) For the purposes of this section:

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

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

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

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

(a) the amount set out in Column 3 of the following table for a family unit described in

Column 1 of an applicant or a recipient described in Column 2, plus

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

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

Item	Column 1	Column 2	Column 3
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	Family unit composition	Age or status of applicant or recipient	Amount (\$)
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	983.50
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$1133.50
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$1378.50
4	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with disabilities	\$1853.50

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

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

(2) The monthly shelter allowance for a family unit other than a family unit described in section

14.2 (1) of the Act is the greater of

(a) the minimum set out in the following table for the family unit, and

(b) the lesser of

(i) the family unit's actual shelter costs, and

(ii) the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$500

2	2 persons	\$150	\$695
3	3 persons	\$200	\$790
4	4 persons	\$225	\$840

Schedule B

Net Income Calculation

(section 24 (b))

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) *[amount of disability assistance]* of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) Repealed [B.C. Reg. 96/2017];
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (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 *[low income 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;
- (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;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*,
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program;
- (xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]
- (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental*

- Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxx) a refund provided under Plan I as established under the Drug Plans Regulation;
 - (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
 - (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
 - (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;
- (xlili) 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;
- (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 section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 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.

(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.

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*; a tax refund;

(f) 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).]

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.

EMPLOYMENT AND ASSISTANCE ACT

19.1 The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

- (a)Part 1 [*Interpretation and Application*];
- (b)Part 2 [*Appointments*], except sections 7 (3) [*remuneration and benefits after expiry of term*] and 10 [*remuneration and benefits for members*];
- (c)Part 3 [*Clustering*];
- (d)section 30 [*tribunal duties*];
- (d.1)section 40 [*information admissible in tribunal proceedings*];
- (e)section 44 [*tribunal without jurisdiction over constitutional questions*];
- (f)section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];
- (g)Part 8 [*Immunities*];
- (h)section 58 [*standard of review with privative clause*];
- (i)section 59.1 [*surveys*];
- (j)section 59.2 [*reporting*];
- (k)section 60 (1) (g) to (i) and (2) [*power to make regulations*];
- (l)section 61 [*application of Freedom of Information and Protection of Privacy Act*].

ADMINISTRATIVE TRIBUNALS ACT

Tribunal without jurisdiction to apply the Human Rights Code

- 46.3** (1)The tribunal does not have jurisdiction to apply the *Human Rights Code*.
(2)Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

APPEAL NUMBER 2024-0134

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back
to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Melissa McLean

Signature of Chair

Date (Year/Month/Day)
2024/06/26

Print Name
Glenn Prior

Signature of Member

Date (Year/Month/Day)
2024/06/30

Print Name
Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)
2024/06/26