

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated July 30, 2024, in which the Ministry determined that the Appellant was not eligible to receive disability assistance in August 2024, because he received unearned income in June 2024 that was more than the rate of disability assistance for his family unit size.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) s. 1(1) definition of “unearned income”, subsection (g); ss. 9 and 24; and Schedule A, Disability Assistance Rates, ss. 1, 2(1) and 4(1)

Employment and Assistance Act, s. 22(4)

Full text of the Legislation is in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place by videoconference on August 26, 2024. The Appellant attended with an advocate, who also gave evidence as a witness. The Appellant was assisted by an interpreter who attended by telephone.

At the hearing, the Appellant told the Panel that he had not eaten for three days because he had no money, and that he may forget things or struggle to understand or process information at the hearing. The Panel offered the Appellant the opportunity to ask for an adjournment, but the Appellant said that he wanted to go ahead with the hearing, and he relied on the assistance of the advocate.

Evidence before the Ministry at Reconsideration:

The Appellant is a sole recipient of disability assistance under the *Employment and Assistance for Persons with Disabilities Act*. Under Schedule A of the Regulation, the maximum allowable rate of support and shelter for a sole recipient is \$1,483.50.

In June 2024 the federal government paid the Appellant \$2,004.00 as sick benefits under the federal employment insurance plan ("EI"). Through a data matching program between Service Canada and the Ministry, the Ministry was notified that the Appellant had received these funds.

On July 5, 2024, Service Canada sent the Appellant a letter stating that the federal government is unable to pay the Appellant EI because his Social Insurance Number had expired on June 23, 2024. The effective date of this decision is stated as "start date of the D60". On July 17, 2024, Service Canada sent the Appellant a letter stating that the federal government "is unable to pay you Employment Assistance sickness benefits effective May 3, 2024 because you did not prove that you would be available for work if you were not sick." Service Canada explained that that the Appellant's "maintained status" ended on May 3, 2024 because on that day he was notified that his application for work permit extension had been denied.

The Appellant gave the Service Canada letters to the Ministry on July 18, 2024, together with an amended monthly report declaring \$2004 income from EI in June 2024. The income the Appellant declared for June 2024 was more than \$1483.50, the amount of disability assistance for a sole recipient under Schedule A, and as a result, the Ministry denied the Appellant income assistance for August 2024.

In his Request for Reconsideration, the Appellant told the Ministry:

- His passport expired in January 2024.
- His work permit expired on July 10, 2024.
- He had applied for renewal of his work permit which was still in process.

- He has not received EI because of the issues with his legal status.

Additional Evidence:

Appellant:

At the hearing, the Appellant submitted as evidence a Notice of Debt from Service Canada, dated July 20, 2024, setting out a total debt amount of \$3,607.00. The Notice of Debt stated as explanation "Sickness", with the reason, "Overpayment", and includes a slip to return with a payment.

The Appellant's advocate stated:

- The Appellant had not contacted Service Canada to make payment arrangements yet because he was scared and did not know what to do.
- The advocate and the Appellant are aware, and expect, that the Appellant will be making payments to satisfy the debt.
- The advocate had told the Appellant's previous case manager to tell both EI and the Ministry that the Appellant was receiving money from two sources, and they did so.
- The Appellant was not trying to collect both EI and disability assistance.
- Through the previous case manager, the Appellant applied to renew his work permit before it expired, but the reviewing officer did not approve the renewal because the Appellant did not have a valid passport. The Appellant had to travel to another province to apply in person at the embassy of the country that would issue the passport renewal. The case manager sent in the application for renewal of the work permit on May 27 or 28, 2024. When the advocate contacted the government department two months later, they said they had not received the application. The advocate helped the Appellant re-submit the application on August 16, 2024. They have not had a determination of the renewal request yet.

The Appellant stated:

- He reported to the Ministry that he was receiving EI.

In answer to a question from the Ministry, the Appellant stated:

- He did not receive EI in July or August.

In answer to a question from the Panel, the Appellant stated:

- He has applied for permanent resident status in Canada, but he cannot remember the date he applied.
- He has a passport from the last country he resided before he came to Canada, valid until 2033.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the Notice of Debt or the additional oral evidence of the Appellant and the advocate.

The Notice of Debt and the additional oral evidence of the Appellant and the advocate provide further information about the status of the Appellant's debt to the federal government, and the circumstances around his eligibility to receive EI in June 2024. The additional evidence is reasonably necessary to determine the issues in the appeal, and therefore the Panel finds that the evidence is admissible under s. 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in the appeal is whether the Ministry's determination that the Appellant was not eligible to receive disability assistance for August 2024 is reasonably supported by the evidence or is a reasonable application of the legislation in the Appellant's circumstances. The Ministry determined that the Appellant was not eligible for August assistance because he received \$2,004.00 in EI sickness benefits in June 2024, which is more than the maximum monthly allowance for a sole recipient of disability assistance.

Appellant's Position:

The Appellant says that he has been notified by Service Canada that he must repay the money he received in June 2024, so he should be eligible to receive the August disability allowance. He says that his financial situation is dire, and he will be evicted from his residence because he cannot pay his rent without funds from the Ministry. He says that it would not be fair for him to be ineligible both for EI and disability assistance.

Ministry Position:

The Ministry says that, in June 2024, the Appellant received EI benefits of \$2,004.00. EI is unearned income, as defined in section 1 of the Regulation, and is deducted, dollar for dollar, from disability assistance. As a sole recipient, the maximum disability assistance a sole recipient of disability assistance would be eligible to receive is \$1,483.50. June 2024 income must be reported by July 5, 2024, and is deducted from August disability assistance. As the EI benefit the Appellant received in June 2024 was more than the amount of disability assistance for a sole recipient, the Ministry says that, under section 9(2) of the Regulation, the Appellant is not eligible to receive disability assistance in August 2024.

At the hearing, the Ministry stated that the fact that the Appellant must repay the EI benefit does not change his ineligibility for August disability assistance, as the Appellant received the funds and had the money available to him in June.

Panel Decision:

The Appellant received \$2,004.00 as EI sickness benefits from the federal government in June 2024. In letters dated July 5 and 17, 2024, the federal government told the Appellant that the government could not pay the Appellant EI benefits, first because his Social Insurance Number had expired, and then because he did not have a valid authorization to work in Canada. In the second letter the federal government also said that the appellant was not eligible to be paid EI benefits effective May 3, 2024.

On July 20, 2024, the federal government sent the Appellant a Notice of Debt for overpayment of EI sickness benefits in the amount of \$3,607.00. The Panel finds that this amount includes the \$2,004.00 that was deposited to the Appellant's bank account in June 2024.

The Appellant has not yet contacted the federal government to arrange repayment, but he acknowledges that the amount is a debt he owes. He expects to repay the amount by monthly payments when he is able.

The Ministry says that, even if the Appellant was not eligible to receive EI in June 2024, and is obliged to repay the money, it is still unearned income that makes him ineligible to receive disability assistance in August 2024.

The Panel finds that the Ministry's interpretation is not a reasonable application of the legislation in the Appellant's circumstances. While the original decision was reasonable, based on the information from the data matching program, the Appellant's bank statement and monthly report, the additional information provided at Reconsideration and on appeal confirms that the Appellant was not eligible to receive EI in June 2024. While the federal government deposited funds in the Appellant's bank account in June, the letters from the government confirm that the money should not have been paid to him. The Notice of Debt confirms that the Appellant is obliged to repay that money. The Appellant acknowledges the debt and is going to make arrangements to repay the money.

The Panel finds that, based on the information in the letters and Notice of Debt from Service Canada, the Appellant has not received EI as unearned income, because he was not eligible to receive EI in June 2024 and he is obliged to repay the money.

The Ministry submitted that the Appellant did receive unearned income because the funds were available to him in June 2024. According to the Ministry's argument, the Appellant would be ineligible to receive EI from the federal government and would also be ineligible to receive disability assistance from the Ministry, which the Panel finds would be an unreasonable outcome.

The Panel finds that, under the legislation, the question is whether the Appellant received income, not whether he had money available to him. The money that was deposited to the Appellant's bank account in June 2024 is more analogous to a personal loan, or a cash advance on a credit card, neither of which would be "unearned income" under the Regulation - while a person may have those funds available for their use, they have also incurred a corresponding debt. Similarly, the Appellant received money in his bank account, and had the use of it for a brief time, but he is obliged to repay it, so he has not received it as income.

Further, Service Canada wrote in its July 17, 2024 letter that “we are unable to pay you Employment Insurance sickness benefits effective May 3, 2024”. Therefore, the Panel finds that it would also be contrary to the evidence of Service Canada to find that the money that Service Canada paid to the Appellant in June 2024 was, in fact, Employment Insurance sickness benefits.

The Appellant is not seeking a retroactive accounting going back many months. The federal government paid the money to the Appellant in June 2024. The mistake was discovered, and the Appellant and the Ministry were notified, in mid-July 2024, before the August disability allowance was payable by the Ministry.

Therefore, the Panel finds that, as the Appellant was not eligible to receive EI in June 2024, and the additional evidence confirms that the federal government requires repayment of the money paid to the Appellant, the Ministry’s Reconsideration Decision that the Appellant is not eligible for disability assistance in August 2024 is not a reasonable application of the legislation in the Appellant’s circumstances.

Conclusion:

The Panel rescinds the Reconsideration Decision. The Appellant is successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons With Disabilities Regulation

Definitions

s. 1 (1) In this regulation:

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

(g) employment insurance;

Limits on income

s. 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

s. 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

(section 24 (a))

Maximum amount of disability assistance before deduction of net income

s. 1 (1) Subject to this section and sections 3 and 6 to 8 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

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

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

Monthly support allowance

s. 2 (0.1) For the purposes of this section:

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

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

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of
 (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
 (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
 (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

Monthly shelter allowance

s. 4 (1) For the purposes of this section:

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

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

(2) The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

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

(b) the lesser of

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

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

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

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2024-0299

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/08/30

Print Name
Cecilia Low

Signature of Member

Date (Year/Month/Day)
2024/08/30

Print Name
Melissa McLean

Signature of Member

Date (Year/Month/Day)
2024/08/30