

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of April 8, 2021 (the “Reconsideration Decision”), which determined that the Appellant had received an overpayment of disability assistance in the amount of \$53,282.28 between June, 2011 and September, 2017 as a result of the Appellant not having reported a number of sources of income received in that period which were either not exempt or exceeded the applicable exemption limits under the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), and that the Appellant was liable to reimburse the Ministry for the overpayment, pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). Specifically, the Ministry determined that income from the Appellant’s spouse and certain federal grants were required to be included in the Appellant’s eligible assistance amount calculation during the period under review.

PART D – RELEVANT LEGISLATION

EAPWDA- sections 1, 1.1, 3, 11, 18, and 19

EAPWDR- sections 1, 9, 24, 29, Schedule A - sections 1, 2, 4, and Schedule B- 1, 2, 3

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance who was a sole recipient until entering a spousal relationship in or about June, 2011. The Appellant married on September 5, 2015.

The information before the Ministry at the time of the Reconsideration Decision included:

- a two page spreadsheet (the “Spreadsheet”) setting out the monthly net income of the Appellant’s family unit, the eligible exemption amount for earned income, the monthly net income of the Appellant’s family unit after applying the exemption amount, disability assistance received by the Appellant and a calculation of what the Ministry indicated the Appellant should have received for each month between June, 2011 and September, 2017;
- a series of transaction histories for accounts in the name of the Appellant’s spouse, including:
 - chequing account for the period between March 7, 2013; and November 15, 2016;
 - chequing account for the period between May 11, 2011 and January 11, 2012;
 - chequing account for the period between January 1, 2012 and February 9, 2013;
 - high interest savings account for the period between January 1, 2012 and February 4, 2013; and(the “Spouse’s Statements”)
- the Appellant’s bank statements (the “Appellant’s Statements”) for the period between October 18, 2012 and November 17, 2017;
- the Appellant’s marriage certificate;
- letter to the Appellant from the Ministry, dated November 10, 2017, advising that the Appellant’s file had been selected for review;
- letter to the Ministry from the Appellant, dated November 26, 2017, confirming the date that the Appellant’s spouse moved in with the Appellant;
- Ministry overpayment charts (the “Overpayment Chart”) for the following periods:
 - August 2011 to February 2015; and
 - March 2015 to November 2017;
- letter to the Appellant from the Ministry, dated November 17, 2019, enclosing the Overpayment Charts;
- the Appellant’s Request for Reconsideration, dated February 18, 2021 (the “RFR”), which included letters from the Appellant and the Appellant’s spouse, which described:
 - the history of the Appellant’s file and disability;
 - the Appellant’s understanding of reporting requirements to the Ministry;
 - the Appellant’s history as a high performance para-athlete; and
 - how the overpayment came about;

After the Reconsideration Decision, both the Ministry and the Appellant made submissions to the tribunal in advance of the hearing of the appeal.

The Ministry’s submission (the “Ministry Submission”) consisted of a series of Reviews conducted of the Appellant’s file between September 2005 and June 2007.

The Appellant’s submission consisted of a letter from the Appellant to the Tribunal, dated May 4, 2021 (the “Appellant’s Submission”), describing that the Appellant received grant monies from the federal government to assist the Appellant with the costs of the Appellant’s athletic endeavours (the “Athletic Grants”). The Appellant argued in the Appellant’s submission that these monies, received from the federal government, should not have been considered “earned income”.

At the hearing of the appeal, the Appellant described the purpose of the monies received by the federal government as a training allowance to athletes to offset the significant costs of adaptive sports. The Appellant confirmed that the amounts received in the Athletic Grants were significantly less than the amount actually spent on a number of items associated with the Appellant's athletic pursuits, including the cost of equipment and travel. The Appellant stated that it was not clear that there was any reporting requirement for the monies received from the federal government. The Appellant had also stated that, at the time of initially applying for disability assistance, at the age of 18, it was the Appellant's understanding that only earned income needed to be reported.

The Appellant described advising the Ministry in 2017 about a change in employment, which triggered a review of the Appellant's file. The Appellant described being able to provide all of the documents requested by the Ministry in about mid-2018.

The Appellant described not having submitted monthly reports of income until 2017. The Appellant advised that monthly statements were received from the Ministry breaking down the amount of disability assistance that was being paid but that not all of them were opened. The Appellant understood that everything was fine with the Ministry if cheques were still coming. In the result, the Appellant had no contact with the Ministry for many years before the review was triggered. The Appellant described having completed address changes on a couple of occasions but had gone into a Ministry office to do that. The Appellant did not recall any investigation being triggered by a change in address.

The Appellant stated that the Ministry did not live up to its responsibilities in respect of the forms and to ensure that assistance went only to eligible clients. The Appellant expressed a belief that the current situation could have been mitigated had the Ministry done more follow up.

The Appellant confirmed that the amount of the Athletic Grants was, when received, \$3,000.00 bi-monthly. In the result, much of the income received by the Appellant's family unit was income earned from employment by the Appellant's spouse.

The Ministry advised that it was likely a Ministry employee who witnessed the signatures of the Appellant on the review forms contained in the Ministry Submission. The Ministry also stated that reviews occur periodically but that reporting obligations are always outlined to recipients of assistance and were spelled out on the third page of the review forms signed by the Appellant. The Ministry did concede that at the time the Appellant had initially applied for disability assistance, recipients did not receive that same kind of orientation about rights and obligations that new recipient now receive.

The Ministry advised that reviews are ordinarily triggered by some change in circumstances of recipients but that the Appellant would have had monthly reporting forms delivered with disability cheques and stubs. When monthly reports are not returned by recipients, the Ministry's policy is to conclude that no changes have taken place.

The Ministry conceded that monies received from the federal government may have qualified as "unearned income" that was exempt under section 1(a)(l) of Schedule B to the EAPWDR which exempts "education and training allowances, grants, bursaries or scholarships, other than student financial assistance."

According to the Ministry, this was an exemption added to the EAPWDR when it was amended on December 1, 2015.

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The panel admits the evidence of the Appellant and the Ministry in both the Appellant Submission and the Ministry Submission and the oral evidence at the hearing of the appeal as evidence that is not part of the record but that is reasonably required for a full and fair disclosure of all matters related to the appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had received an overpayment of disability assistance in the amount of \$53,282.28 between June, 2011 and September, 2017 as a result of the Appellant not having reported a number of sources of income received in that period which were either not exempt or exceeded the applicable exemption limits under the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”), and that the Appellant was liable to reimburse the Ministry for the overpayment, pursuant to section 18 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

Panel Decision

Full text and description of the legislation follows these reasons.

The Appellant confirmed many of the facts that are relevant to this appeal, including:

- a spousal relationship that began in or about June 2011
- that the family unit’s net monthly income is as set out in the Spreadsheet, with most of the income that was received by the Appellant’s family unit in the relevant period being attributable to the employment of the Appellant’s spouse.

The Appellant likewise confirmed that no changes in the Appellant’s circumstances were reported to the Ministry until late 2017, triggering the review.

The Appellant’s argument is that the responsibility for the overpayment should be shared due to a lack of follow up by the Ministry and the continued provision of disability assistance. While it is regrettable that the overpayment of the Appellant’s disability assistance was not flagged sooner, the Ministry Submission highlights that the review forms signed by the Appellant referenced the obligation to report any change in circumstances that could affect the Appellant’s eligibility for disability assistance. In the end, section 11 of the EAPWDA specifically imposes an obligation on recipients of disability assistance to complete monthly reports which the Appellant confirms was not done. While the Ministry appears to treat the failure to submit a monthly report as an indication that no changes have taken place in a recipient’s circumstances, the legislation ultimately imposes the obligation to report changes on recipients themselves.

In this case, the Ministry treated *all* of the income received by the Appellant’s family unit as *earned* income and applied only the rules relating to the earned income exemptions that were in place during the period in which income was received to determine the eligibility of the Appellant’s family unit to disability assistance for the relevant period between June 2011 and September 2017. While it is clear that the income received by the Appellant’s spouse in that period met the definition of “earned income”, it is equally clear that the Athletic Grants received by the Appellant do not meet the definition of earned income. On the other hand, while the Athletic Grants do not appear to meet any of the specific types of unearned income described in the definition of unearned income set out in section 1 of Schedule B to the EAPWDR, subsection (t) sets out that “any other financial awards or compensation” are captured by the definition of unearned income.

The panel concludes that the Ministry’s determination that the Appellant’s Athletic Grants from the federal government amounted to earned income was not reasonable. The effect of that determination by the Ministry is that the Ministry did not consider whether any of the exemptions for unearned income set out in section 1 of Schedule B to the EAPWDR applied to the Athletic Grants such that they ought not to

have been included *at all* in the calculation of the Appellant's net income in any given month. To the extent that the Athletic Grants were exempt from inclusion in the family unit's net monthly income by operation of any of the exemptions provided for in section 1 of Schedule B to the EAPWDR including, for example, subsection (a)(l), which exempts "education and training allowances, grants, bursaries or scholarships, other than student financial assistance", the grants would have been exempted in their entirety in the months that they were received and the family unit's net income would have been less, resulting in a slower depletion of the family unit's annual exemption amounts for earned income than that which the Ministry had calculated in the Reconsideration Decision.

In view of the foregoing, the panel finds that the Reconsideration Decision was not reasonable to the extent that the Athletic Grants received by the Appellant from the federal government were classified as earned income and the Ministry failed to give any consideration to whether or not any of the exemptions for unearned income applied to the grants. The panel therefore rescinds the Ministry decision and refers the decision back to the Ministry for a determination as to amount. The Appellant is successful in this appeal.

Legislation

Section 1 of the EAPWDA contains a number of definitions relevant to this appeal:

"**dependant**", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person, or
- (b) is a dependent child of the person;

"**family unit**" means an applicant or a recipient and his or her dependants;

"**spouse**" has the meaning in section 1.1;

Section 1.1 of the EAPWDA defines spouse as follows:

Meaning of "spouse"

1.1 (1) Two persons are spouses of each other for the purposes of this Act if

- (a) they are married to each other,
- (b) they declare to the minister that they are in a marriage-like relationship, or
- (c) they have resided together for at least the previous 12 consecutive months and the minister is satisfied that the relationship demonstrates
 - (i) financial dependence or interdependence, and
 - (ii) social and familial interdependence

consistent with a marriage-like relationship.

(2) The Lieutenant Governor in Council may prescribe circumstances in which two persons are not spouses of each other for the purposes of this Act.

Section 3 of the EAPWDA sets out the basic eligibility criteria for disability assistance:

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.

Section 11 of the EAPWDA imposes a reporting obligation on recipients of disability assistance:

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form specified by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Section 18 of the EAPWDA imposes a repayment obligation on recipients who have received more disability assistance than their respective family unit was eligible to receive:

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Section 19 of the EAPWDA describes the legal mechanisms by which the Ministry may recover amounts that were overpaid to recipients of disability assistance:

Liability for and recovery of debts under Act

19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Section 1 of the EAPWDR defines earned and unearned income as follows:

"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;
- (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 properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

Section 9 of the EAPWDR sets out what constitutes the income of a family unit:

Limits on income

- 9** (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Section 24 of the EAPWDR sets out the method of calculating the amount of disability assistance which may be paid to a family unit in a given month:

Amount of disability assistance

- 24** Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than
- (a) the amount determined under Schedule A, minus
 - (b) the family unit's net income determined under Schedule B.

Section 1 of Schedule B to the EAPWDR sets out how disability assistance rates are calculated:

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*.

Sections 2 and 4 of Schedule A to the EAPWDR set out the amounts payable to a family unit for both basic disability assistance and monthly shelter allowance.

The amounts payable for both have varied during the relevant period between 2011 and 2017 for a person in the Appellant's circumstances from \$1,270.56 (August 2011 to August 2016) to \$1,347.56 (September 2016 to March 2017), \$1,397.56 (April 2017 to September 2017), and \$1,497.56 (October 2017 and November 2017).

Section 1 of Schedule B to the EAPWDR sets out the deduction and exemption rules for calculating a family unit's net income:

Deduction and exemption rules

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

- (a) the following are exempt from income:
 - (i) any income earned by a dependent child attending school on a full-time basis;
 - (ii) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]
 - (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
 - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (v) the basic child tax benefit;
 - (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
 - (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
 - (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
 - (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
 - (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;
- (xii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with
 - (A) the Sixties Scoop Settlement made November 30, 2017, or
 - (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (xviii) 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;
- (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;
- (xlvi) child support;
- (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) compensation paid or payable under Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) of that Act;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in

- respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
- (liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
- (liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
- (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
- (lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;
- (lviv) money that is paid or payable from a settlement under
- (A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or
- (B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;
- (lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (Canada);
- (lxi) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program,
- (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.

Section 2 of Schedule B to the EAPWDR sets out the eligible deductions from earned income:

Deductions from earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Section 3 of Schedule B to the EAPWDR sets out how a recipient's annual exemption is calculated:

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (a) \$1 250, in the case of a family unit that includes only one recipient,
- (b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 500, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*;

"qualifying month", in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and
- (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

- (a) forms during the calendar year, and
- (b) includes at least one person who
 - (i) is designated as a person with disabilities, and
 - (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of
 - (i) the base amount for the family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
 - (i) the base amount for the recognized family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
 - (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if

- (A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or
 - (B) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
- (b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;
- (c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is
- (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.

(6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:

- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
 - (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;
- (b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of
 - (i) nil, and
 - (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
 - (A) by deducting the qualifying income of that last family unit in that last qualifying month;
 - (B) by deducting the product of
 - (I) the amount specified in paragraph (a) of the definition of "base amount", and
 - (II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;
- (c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of

- (i) the amount specified in paragraph (a) of the definition of "base amount", and
- (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

- (a) nil, and
- (b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:
 - (i) by deducting the qualifying income of the family unit in that last qualifying month;
 - (ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded
 - (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,by deducting the product of
 - (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made
 - (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,by adding the product of
 - (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iv) by deducting the product of
 - (A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and
 - (B) the number of calendar months after that last qualifying month and before the index qualifying month.

The rules regarding the exemption amounts have likewise been amended in the relevant period between June 2011 and November 2017 as follows for recipients in the Appellant's circumstances:

- between June 2011 and September 2012, the exempt amount of earned income was \$500.00 per month;
- between October 2012 and December 2012, the exempt amount of earned income was \$800.00 per month;
- between January 2013 and December 2014, the exempt amount of earned income was \$1,000.00 per month;
- From January 2015 to July 2017, the exempt amount of earned income was \$12,000.00 per year, against which a family unit's net income would be deducted until the annual exemption was used up; and
- In August and September 2017, the exempt amount of earned income was \$14,400.00 per year, against which a family unit's net income would be deducted until the annual exemption was used up.

APPEAL NUMBER
2021-00082

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) ☒

and

Section 24(2)(a) ☐ or Section 24(2)(b) ☒

PART H – SIGNATURES

PRINT NAME

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/May/18

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/May/18

PRINT NAME

Julie Iuvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/May/18