

2024-0451

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated November 26, 2024, in which the Ministry determined that the Appellant was ineligible for the disability assistance that she received in 2018 and between May 2023 to May 2024, resulting in an overpayment of \$13,276.53 (the “**Overpayment**”). As a result, the Appellant is liable to repay the Overpayment according to Section 18 of the *Employment and Assistance for Persons with Disabilities Act*.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – sections 11, 18 and 19
- Employment and Assistance for Persons with Disabilities Regulation (the “**Regulation**”) – sections 1, 9, 24, and 29

Note: The full text is available after the Decision.

Part E – Summary of Facts

The Appellant's hearing was held in person on April 10, 2025. A representative from the Ministry attended via telephone.

(a) The Reconsideration Decision

The following summarizes the evidence before the Ministry at the time of the Reconsideration Decision:

The Appellant is the sole recipient of disability assistance and has received benefits from the Ministry since October 1, 2017.

On July 13, 2023, the Ministry advised the Appellant that she was required to report income received from ICBC (Income Replacement) as part of her disability assistance obligations.

During a phone conversation on April 25, 2024, the Ministry explained to the Appellant how her Annual Earnings Exemption (the "**Exemption**") operates and is applied. The Ministry also reminded the Appellant to report all income to ensure the Exemption was accurately calculated.

On August 29, 2024, the Ministry sent the Appellant a notification package indicating that a review of her disability assistance file was underway due to a potential overpayment. The Appellant was invited to contact the Ministry to discuss the matter before the review concluded.

By letter dated September 17, 2024, the Ministry advised the Appellant that no response had been received regarding the August 29 notice. As a result, the Ministry concluded that an overpayment in the amount of \$13,276.53 (the "**Overpayment**") had occurred. The Overpayment was based on the following:

- In 2018, the Appellant failed to declare \$3,829.87 in net employment earnings after exceeding her Exemption limit; and
- Between May 2023 and May 2024, she failed to report \$33,141.53 in ICBC Income Replacement payments.

The September 17 letter was accompanied by the following documentation:

- An Overpayment Chart showing the Ministry's calculation of the Overpayment;
- An Annual Earnings Exemption Calculator outlining how the Exemption was calculated and applied;
- A Confirmation of Earnings (form HR2181A) signed by the Appellant's 2018 employer;
- A Record of Employment from another 2018 employer confirming additional

earnings; and

- A Financial Transactions chart detailing ICBC Income Replacement payments received between May 2023 and May 2024.

On October 8, 2024, the Appellant contacted the Ministry and requested reconsideration of the Overpayment decision, specifically disputing the inclusion of ICBC Income Replacement amounts.

On October 22, 2024, the Appellant submitted a formal Request for Reconsideration (form HR0100) and simultaneously requested an extension to submit supporting documents. To support the extension request, the Appellant included a Request for Access to Records form (IPB 1) addressed to the Ministry of Poverty Reduction, requesting "*a copy of every phone call transcript, self-serve message, and all communication between myself and the Ministry from 201-present*" [sic]."

The Ministry granted the Appellant's extension request on November 6, 2024.

On November 26, 2024, the Ministry issued its Reconsideration Decision, confirming the Overpayment. The Reconsideration Decision stated:

"When you declare your 2018 employment income, the net pay is deducted from the \$12,000 earnings exemption amount each month until that limit is reached. Thereafter, earnings are deducted dollar-for-dollar from your disability assistance rate of \$1,133.42.

The Ministry has reviewed your file and found that you did not declare any employment income received in 2018. Had it been declared, your \$12,000 exemption would have been exhausted by part of your October 2018 earnings. Therefore, all subsequent earnings would have been fully deducted from your assistance rate.

Further, the Ministry determined that you did not declare any ICBC Income Replacement payments received from May 2023 to March 2024. These payments are not exempt and should have been deducted from your assistance.

Regardless of the payment period, disability assistance recipients must declare income received in a given month by the 5th of the following month, pursuant to Section 29 of the EAPWD Regulation. This income then affects assistance payments two months later.

As you failed to report both your 2018 earnings and ICBC Income Replacement payments between May 2023 and March 2024, the Ministry calculates that you received \$13,276.53 in disability assistance to which you were not entitled. Under Section 18 of the EAPWD Act, you are required to repay this amount."

The Ministry noted that the Appellant did not submit any additional documentation for consideration prior to the Reconsideration Decision being issued.

(b) Appeal and Adjournment Request

On December 5, 2024, the Appellant filed a Notice of Appeal. The Notice did not include any reasons for the appeal.

On December 10, 2024, the Appellant submitted an Appeal Adjournment Request (form EAAT006), seeking a four-month adjournment. She cited the need to gather supporting documents and to secure legal representation. The adjournment was granted.

The Appellant's in-person hearing proceeded on April 10, 2025.

At the outset of the hearing, the Appellant requested a further adjournment. She indicated that she was unprepared to proceed, citing concerns including the absence of supporting documents, her inability to obtain legal assistance, and unverified medical issues. The Appellant was given a full opportunity to present arguments in support of her request.

The Ministry took no position on the adjournment and deferred to the decision of the Panel.

After asking clarifying questions and considering the request, the Panel declined to grant a further adjournment. In doing so, the Panel noted the following:

- The Appellant had previously been granted a four-month adjournment for the very same reasons cited in her renewed request;
- The request was not made at the earliest possible opportunity;
- The circumstances underlying the request were reasonably foreseeable;
- The Appellant had not provided evidence of having made reasonable efforts to avoid the need for a further adjournment; and
- The request did not relate to a significant or determinative issue in the hearing.

Accordingly, the hearing proceeded as scheduled.

(c) Appeal Hearing – Submissions

During the hearing, the Appellant did not dispute the Ministry's treatment of her 2018 income in relation to the Overpayment calculation. In fact, she acknowledged that she had been misinformed and failed to report her income as required.

Instead, the Appellant focused her concerns on the treatment of ICBC Income Replacement benefits she received between May 2023 and May 2024. She speculated that amendments to the Regulation, which came into force on September 18, 2024, might reduce or eliminate the Overpayment if applied. When asked to elaborate, the Appellant was unable to identify the specific sections of the Regulation that had been amended, nor could she explain how the changes would impact the calculation of her Overpayment.

The Ministry, in response, relied on the Appeal Record, which primarily comprised the Reconsideration Decision. With respect to the Regulation amendments, the Ministry explained the following:

- The amendments to the Regulation took effect after the period during which the Overpayment was incurred and therefore did not apply;
- There were no transitional provisions that would permit retroactive application of the Regulation amendments; and
- Even if the amendments were applied, it was unclear if they would reduce or eliminate the Overpayment.

The Panel determined that the Appellant's and Ministry's testimony were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for disability assistance that she received in 2018 and between May 2023 and May 2024, resulting in the Overpayment which the Appellant is liable to repay under Section 18 of the *Act*.

Appellant's Position

The Appellant submits that recent amendments to the Regulation alter the treatment of her ICBC Income Replacement benefits and, as such, should be applied to her circumstances. Although these amendments came into force after the Overpayment period, she argues they warrant a reassessment and recalculation of the Overpayment.

Ministry's Position

The Ministry maintains that the Appellant is ineligible for disability assistance for the reasons stated in the Reconsideration Decision; as a result, its finding regarding the Overpayment should stand.

Panel Decision

Section 11 of the *Act* provides that, for an individual to be eligible for disability assistance, they must submit a form and notify the Ministry of any change in circumstances or information that may affect their eligibility for disability assistance.

Section 18 of the *Act* provides that, if disability assistance is provided to an individual that is not eligible for it, the recipient for which the overpayment is provided is liable to repay to the government the amount or value of the overpayment provided for that period.

Under section 19 of the *Act*, the amount that a person is liable to repay may be deducted from any subsequent disability assistance.

Under section 1 of the Regulation, "unearned income" means any income that is not earned income, and includes, insurance benefits.

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

As set out in Section 24 of the Regulation, a person's income (calculated under Schedule B of the Regulation), must be deducted from their disability assistance (calculated under Schedule A of the Regulation).

Section 29 of the Regulation requires a recipient of disability assistance to report any change in circumstances or information that may affect their eligibility for disability benefits on the 5th day of each month.

Sections 2 and 4 of Schedule A of the Regulation specify the maximum allowable rate of support and shelter for the size of the family unit.

Schedule B of the Regulation clarifies how net income is calculated for the purposes of determining eligibility for disability assistance. In short, all unearned income must be included, except permitted deductions and any income exemptions.

At the hearing, the Appellant admitted she did not report \$3,829.87 in 2018 employment earnings, which went over her \$12,000 Exemption limit. These earnings, supported by a Confirmation of Earnings and Record of Employment, should have been deducted from her assistance under section 24 and Schedule B. The Panel finds the Ministry's calculation of this part of the Overpayment to be reasonable in the circumstances.

Likewise, the Appellant failed to report \$33,141.53 in ICBC Income Replacement payments from May 2023 to May 2024, as required by section 29 of the Regulation. These payments, shown in the Ministry's Financial Transactions chart, were unearned income and should have been deducted by virtue of section 1 and Schedule B of the Regulation. As a result, the Panel finds that the Ministry's calculation of this part of the Overpayment is also reasonable.

The Appellant claimed that changes to the Regulation, effective September 18, 2024, might change how ICBC Income Replacement payments are treated and lower the Overpayment. She could not point to specific changes or explain their effect. Regardless, the legal rule is that laws and regulations apply only moving forward unless they clearly state they apply to the past. As there are no transitional provisions that would make the amendments operate retroactively. Therefore, the Regulation in place during the Overpayment period controls this case. The Ministry stated, and the Panel agrees, that the changes to the Regulation came after the Overpayment period and do not apply retroactively. Thus, the Panel must evaluate eligibility and the Overpayment based on the law as it was until May 2024.

Section 18 of the Act says that if someone receives disability assistance they were not eligible for, they must repay it, regardless of whether they meant to or not. Section 19 of the Act allows the Ministry to recover this amount by deducting it from future assistance. The Appellant's failure to report her 2018 earnings and ICBC Income Replacement payments violated section 11, making her ineligible for the assistance she received because her income was too high under section 9(2) of the Regulation. The Ministry's finding that she was ineligible aligns with the Act and Regulation, which aim to provide assistance only to those with income below set limits.

The Panel finds that the Ministry's decision to find that the Appellant was ineligible for the disability assistance in January 2018 and between May 2023 and May 2024, and liable for

repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

Conclusion

The Panel finds that the Ministry's decision to find that the Appellant was ineligible for the disability assistance in January 2018 and between May 2023 and May 2024, and liable for repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

The Panel confirms the Reconsideration Decision. The Appellant is not successful on appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

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.

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*].

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.

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

Definitions

1 (1)In this regulation:

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

- (a)money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b)cooperative associations;
- (c)war disability pensions, military pensions and war veterans' allowances;
- (d)insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e)superannuation benefits;
- (f)any type or class of Canada Pension Plan benefits;
- (g)employment insurance;
- (h)union or lodge benefits;

(i)financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;

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 191 [*temporary total disability*] or 192 [*temporary partial disability*] 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 specified by the minister:
 - (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;

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(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 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) received by the family unit in the calendar month.

[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, [s. 4](#); 332/2012, s. 1; 226/2014, s. 1; 151/2018, App. 2, [s. 9](#); 270/2019, App. 2, [s. 5](#); 268/2020, App. 2, [s. 2](#).]

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Part G – Order

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

The Panel **Confirms the Ministry Decision** **Rescinds the Ministry Decision**

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2025/04/10

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2025/04/10

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2025/04/10