

# CHAPTER TWENTY-ONE: INCOME ASSISTANCE

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# CHAPTER TWENTY-ONE: INCOME ASSISTANCE

## I. INTRODUCTION

### A. *Income Assistance, Allowances, Hardship and Benefits*

The Employment and Assistance Act, S.B.C. 2002, c.40, [EAA] defines “income assistance” as a support and shelter allowance provided under the Act. The equivalent of income assistance under the Employment and Assistance for Persons with Disabilities Act, S.B.C. 2002, c.40, [EAPWDA] is called “disability assistance”.

The EAA also defines “hardship assistance” as support and shelter allowance. Section 5 states that, subject to the Regulation, the Minister may provide hardship allowance to a person and his or her dependants if the person is not otherwise eligible for income assistance. Hardship assistance is covered in Employment and Assistance Regulations, B.C. Reg. 263/2002 [EAR] Part 4, ss. 39-47; see **Section IV: Hardship Assistance** of this chapter.

Forms of assistance other than income assistance or hardship assistance are called supplements. What may be included as a supplement depends on the definition in the relevant statute.

### B. *Governing Statutes, Regulations, Policy Guidelines and Resources*

#### 1. **Legislation and Regulations**

This chapter gives an overview of income assistance, governed by the:

Employment and Assistance Act, S.B.C. 2002, c.40 [EAA].

Employment and Assistance Regulation, B.C. Reg. 263/2002 [EAR].

Employment and Assistance for Persons with Disabilities Act, S.B.C. 2002, c.40 [EAPWDA].

Employment and Assistance for Persons with Disabilities Regulations, B.C. Reg. 265/2002 [EAPWDR].

The Income Assistance Acts (EAA and EAPWDA) and Regulations (EAR and EAPWDR) constitute the law respecting welfare in B.C. If it can be argued that a decision of the Ministry of Housing and Social Development (MHSD), as directed by policy, is contrary to the intention of the relevant Act or Regulation, a client may have grounds to appeal and have the MHSD decision reversed. Many of the rules can be found in the regulations; however, they change often. Therefore, it is very important that you confirm that you are dealing with the most current legislation.

#### 2. **Policy Guidelines and Resources**

**The Ministry of Employment and Income Assistance Online Resource**

Web site: [www.gov.bc.ca/meia/online\\_resource](http://www.gov.bc.ca/meia/online_resource)

- The Ministry of Housing and Social Development (MHSD) has replaced the BC Employment and Assistance Manual with a new Online Resource. The Online Resource incorporates information from a number of different sources into one user-friendly web site, which will save time spent searching for up-to-date information and resources.

### **Legal Services Society Fact Sheets**

Available online at: [www.lss.bc.ca](http://www.lss.bc.ca) or at [www.povnet.org](http://www.povnet.org).

- The Legal Services Society publishes the following easy-to-understand fact sheets about income assistance rights:

Welfare Fact Sheet #1 – Applying for Welfare

Welfare Fact Sheet #2 – Welfare Benefits

Welfare Fact Sheet #3 – Welfare and the 24-Month Time Limit

Welfare Fact Sheet #4 – Welfare and Exemptions

Welfare Fact Sheet #5 – Welfare and Disability Benefits: PWD

Welfare Fact Sheet #6 – Welfare and Families

Welfare Fact Sheet #7 – Welfare and Health Benefits

Welfare Fact Sheet #8a – Welfare and Appeals: Step 1 Reconsideration

Welfare Fact Sheet #8b – Welfare and Appeals: Step 2 Appeal Tribunal Hearing

### **Statistics Canada**

Advisory Services Pacific Region

600 – 300 West Georgia Street

Vancouver, B.C. V6B 6C7

Telephone: (604) 666-7802

- Statistics Canada publishes low-income cut-off figures by year, population, and family unit size.

## **3. Referrals**

See **Chapter 23: Referrals** for additional referrals

### **LawLINE of Legal Services Society**

Telephone: (604) 408-2172

Toll-free 1-866-577-2525

- LawLINE is a free telephone advice service for people with low incomes who face legal issues in B.C. To be eligible to receive legal advice, financial eligibility guidelines must be met. Even if financial guidelines are not met, a caller may receive some legal information by calling.

### **Community Legal Assistance Society (CLAS)**

300 – 1140 West Pender Street

Vancouver, B.C. V6E 4G1

Telephone: (604) 685-3425

Fax: (604) 685-7611

Web site: [www2.povnet.org/clas](http://www2.povnet.org/clas)

- May help with judicial reviews.

### **B.C. Public Interest Advocacy Centre**

208 – 1090 West Pender Street

Vancouver, B.C. V6E 2N7

Telephone: (604) 687-3063

Fax: (604) 682-7896

E-mail: [bcpiac@bcpiac.com](mailto:bcpiac@bcpiac.com)

- May help with appeals and judicial reviews.

**Coalition of People with Disabilities**

204 – 456 West Broadway  
Vancouver, B.C. V5Y 1R3

Advocacy Access Team: (604) 872-1278  
Fax: (604) 875-9227  
TTY: (604) 875-8835

- Particularly helpful on disability status appeals.

**First United Church**

320 East Hastings Street  
Vancouver, B.C. V6A 1P4

Telephone: (604) 681-8365  
Fax: (604) 681-8928

- Provides advocacy and assistance.

**Downtown Eastside Residents' Association (DERA)**

12 East Hastings Street  
Vancouver, B.C. V6A 1N1

Telephone: (604) 682-0931  
Fax: (604) 669-5499

- Provides advocacy service including representation on appeals; locating nominees; housing.

**MOSAIC**

1720 Grant Street  
Vancouver, B.C. V5L 2Y7

Telephone: (604) 254-9626  
Fax: (604) 254-3932

- Advocacy in many languages.

**Vancouver Mental Patients' Association**

1733 West 4<sup>th</sup> Avenue  
Vancouver, B.C. V6J 1M2

Telephone: (604) 738-2811  
Fax: (604) 738-4132

- Advocacy for those with mental health issues.

**Kettle Friendship Society Advocacy Centre**

1725 Venables Street  
Vancouver, B.C. V5L 2H3  
Telephone: (604) 251-2801

Housing Division Telephone: (604) 251-5664  
Fax: (604) 251-6354  
Web site: [www.thekettle.ca](http://www.thekettle.ca)

- Advocacy focuses on mental health issues and needs involving the MHR, referrals, tribunal attendance.

**Downtown Eastside Women's Centre**

302 Columbia Street  
Vancouver, B.C. V6A 4J1

Telephone: (604) 681-8480  
Fax: (604) 681-8470

- Advocacy, legal and mental health.

**End Legislated Poverty**

211 - 456 West Broadway  
Vancouver, B.C. V5Y 1R3

Telephone: (604) 879-1209  
Fax: (604) 879-1229  
E-mail: [elp@vcn.bc.ca](mailto:elp@vcn.bc.ca)

- Does **not** take referrals of individual files

**United Native Nations Advocacy Resource Centre**

678 East Hastings (2<sup>nd</sup> Floor)  
Vancouver, B.C. V6A 1R1

Telephone: (604) 688-1821  
Fax: (604) 688-1823

**Persons With AIDS Society**

1107 Seymour Street  
2<sup>nd</sup> Floor  
Vancouver, B.C. V6B 5S8

Telephone: (604) 893-2200  
Fax: (604) 893-2251  
E-mail: info@bcpwa.org

- Self-help, community-based resource for HIV-positive and PWA. Advocacy may be provided, but individuals must first apply for membership to the Society.

**AIDS Vancouver Community Workers**

Support: (604) 681-2122 ext. 222

- Service staffed by volunteers

**Positive Women’s Network**

614 - 1033 Davie Street  
Vancouver, B.C. V6E 1M7

Fax: (604) 684-3126  
Telephone: (604) 692-3000  
E-mail: pwn@pwn.bc.ca

**C. *Rights to Welfare and Duties or Discretion of the Ministry***

It is important to note the distinction between a right, which an individual can claim under the law, and a privilege, which an individual may or may not be entitled to, depending on a number of variable circumstances. When the MHSD has a duty, the applicant or recipient has a corresponding right. In all other circumstances, the strongest argument a clinician can make on behalf of a client will depend on the intention of the income assistance legislation and the consistency of that intention with the client’s application for assistance.

When interpreting the income assistance legislation, note carefully sections that grant discretion to the MHSD. These are usually indicated by use of the conditional “may” rather than the prescriptive “shall”.

Be sure to read the relevant section of the appropriate act or regulation in its entirety; sometimes discretion or flexibility is conferred in a subsequent subsection.

**NOTE:** Always obtain from your client a release of information form (found in the LSLAP clinic folder) addressed to the Ministry of Housing and Social Development or, in the case of an appeal, to the Employment and Assistance Appeal Tribunal. These entities will not discuss your client with you unless you have sent them a signed release. When dealing with the MHSD, it is best to fax a copy of the signed release to the appropriate person. A list of local offices and their fax number can be found at: [www.mhr.gov.bc.ca/contacts/index.htm](http://www.mhr.gov.bc.ca/contacts/index.htm).

**II. CATEGORIZATION OF APPLICANTS**

**A. *Employable***

Applicants for income assistance must undergo an employability screen with their Employment and Assistance worker. The following groups are **not** required to complete the screen:

1. applicants admitted to hospital for extended care in a Special Care facility or in a private hospital;
2. Medical Services Only (MSO) applicants;
3. Children in the Home of a Relative (CIHR); and
4. individuals who receive a Child Care Subsidy but no other assistance.

Applicants who score 15 or higher on the employability screen are required to complete an employability profile with the employment and assistance worker. Employability profiles may also be required for applicants who score less than 15 if Ministry staff decides that it would be useful to elicit information meaningful to the employment planning process. Once the employability profile is complete, the employment and assistance worker will have sufficient information to develop the client's Employment Plan and to refer the client to appropriate programs and services, including non-Ministry resources.

If a recipient is still not employed after 12 months of participating in programs and services identified in his or her Employment Plan, Ministry staff will administer the employability profile again and amend the Employment Plan.

Ministry staff may also re-administer the employability profile to determine the impact of certain programs or changes in recipients' personal circumstances. Subsequently, Ministry staff may amend the Employment Plan and refer the recipient to more appropriate services.

The MHSD policy manual advises that Ministry staff should also exercise discretion in situations where it is likely that information solicited from applicants at that time may not be reliable (i.e. individuals in drug or alcohol rehabilitation programs, individuals who have recently left an abusive spouse, and individuals with certain mental health conditions). In these situations, it is reasonable to delay completing the employability screen until a time when the information is likely to be more reliable.

## ***B. No Employment Obligation***

Not every applicant is required to seek, accept or maintain employment, or to participate in employability programs.

Section 29(4) of the EAR exempts the following classes of people from searching for employment or participating in employability programs:

- (a) repealed (B.C. Reg. 116/2003);
- (b) sole applicants or sole recipients who have at least one dependent child who
  - (i) has not reached three years of age, or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (c) sole applicants or sole recipients who have a child in the home of a relative who
  - (i) has not reached three years of age; or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (d) sole applicants or sole recipients who have a foster child who
  - (i) has not reached 3 years of age; or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
- (e) persons who receive accommodation and care in a special care facility or private hospital;

- (f) applicants or recipients admitted to hospital because they require extended care;
- (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
- (h) applicants or recipients in a family unit that includes only applicants or recipients who are
  - (i) repealed (B.C. Reg. 160/2004);
  - (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment;
  - (iii) persons who have separated from an abusive spouse or relative within the previous six months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment;
  - (iv) persons not described in s. 7 (2) (citizenship requirements); or
  - (v) persons who have persistent multiple barriers to employment;
  - (vi) persons who have reached 65 years of age (B.C. Reg. 116/2003);
- (i) children in the home of a relative;
- (j) sole applicants or sole recipients who are providing care under an agreement referred to in s. 8 (agreements with child's kin and others) of the Child, Family and Community Service Act R.S.B.C. 1996, c.46, for a child who
  - (i) has not reached three years of age; or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment (B.C. Reg. 331/2003);
- (k) sole applicants or sole recipients who are providing care under an agreement referred to in s. 93 (1) (g) (ii) (other powers and duties of directors) of the Child, Family and Community Service Act for a child who
  - (i) has not reached three years of age; or
  - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment (B.C. Reg. 331/2003).

***C. Persons Who Have Persistent Multiple Barriers to Employment (PPMB)***

Section 2 of the EAR defines persons with persistent multiple barriers to employment as follows:

- (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in
  - (i) s-s. (2); **and**
  - (ii) s-s. (3) **or** (4).

- (2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:
  - (i) income assistance or hardship assistance under the Act;
  - (ii) income assistance, hardship assistance or a youth allowance under a former Act;
  - (iii) a disability allowance under the Disability Benefits Program Act;
  - (iv) disability assistance or hardship assistance under the Employment and Assistance for Persons with Disabilities Act.
- (3) The following requirements apply:
  - (i) the minister
    - (A) determined that the person scores at least 15 on the employability screen set out in Schedule E; and
    - (B) based on the result of that employability screen, considers that the person has barriers that seriously impede the person's ability to search for, accept or continue in employment;
- (4) the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
  - (i) in the opinion of the medical practitioner,
    - (A) has continued for at least one year and is likely to continue for at least two more years; or
    - (B) has occurred frequently in the past year and is likely to continue for at least two more years; and
  - (ii) in the opinion of the minister, is a barrier that seriously impedes the person's ability to search for, accept or continue in employment; and
- (5) the person has taken all steps that the minister considers reasonable for the person to overcome the barriers referred to in paragraph (a).
- (6) The person has a medical condition, other than an addiction, which is confirmed by a medical practitioner and that,
  - (i) in the opinion of the medical practitioner,
    - (A) has continued for at least one year and is likely to continue for at least two more years; or
    - (B) has occurred frequently in the past year and is likely to continue for at least two more years; and
  - (ii) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

PPMB requests and reviews are adjudicated by PPMB Adjudicators in regional employment and assistance offices.

***D. Persons with Disabilities (PWD)***

Section 2(2) of the EAPWDA defines a “person with disabilities” (PWD) as a person over 18 who has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least two years; and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person’s ability to perform daily living activities either continuously; or
  - (ii) periodically for extended periods; and
  - (iii) as a result of those restrictions, the person requires help to perform those activities.

It is important to note that s. 2(4) allows the Minister to rescind a designation made under s. 2(2).

***E. Single Parents***

A single parent with a dependent child under three years of age, or a dependent child over three years of age with a physical or mental condition that prevents the parent from working outside the home, is excused from seeking or maintaining employment or participating in employability programs. The child may be living with the parent, may live with a relative of the parent, or may be a foster child. (See EAR s. 29(4).

A dependent child is defined as an unmarried person under 19 years of age, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent’s place of residence for more than 50 percent of each month and relies on that parent for the necessities of life.

***F. Students***

Full-time post-secondary students are not eligible for income assistance during the school term. The school term begins the first day of the month after the month in which school begins (generally October, for fall semester) and ends the last day of the month in which final examinations take place. The Minister may authorize an exception in the case of:

- a) dependent children; and
- b) PWD recipients and their spouses. (See Schedule B, s. 8(1) of EAR)

Section 1 of the EAR defines a full-time student as a person who meets the requirements of the Canada Student Financial Assistance Regulation. This means that during a confirmed period within a period of studies, a student must be enrolled in courses that constitute at least 60 percent of a course load recognized by the designated educational institution as constituting a full-time course load and the student’s primary occupation during the confirmed period within that period of studies is the pursuit of studies in those courses.

A PWD recipient can elect to be considered a full-time student when enrolled in courses that constitute at least 40 percent and less than 60 percent of a course load recognized by the designated educational institution as constituting a full-time course load.

Students who are enrolled in unfunded programs (where student loans do not apply), such as high school completion and adult basic education, or students whose post-secondary education is sponsored under a federal or provincial government training or education plan (i.e. some students who are co-managed under the Labour Market Development Agreement or the Aboriginal Human

Resources Development Agreement) may remain eligible for income assistance if they have received prior approval from the Minister and their continued involvement in the educational program, as approved by the Minister, is defined in their Employment Plan, if required.

Part-time students remain eligible for income assistance provided other eligibility requirements, including employment obligations, are met.

### ***G. Self-Employed***

Recipients of income assistance may participate in self-employment programs approved by the Minister. Under Schedule B, s. 4 of the EAR, participants in self-employment programs may claim specific income and asset exemptions. See **Section III.A: General Eligibility Test for Income, Disability and PPMB Assistance**, below for the relevant asset and earned income exemptions.

## **III. ELIGIBILITY**

There are four types of basic social assistance: income assistance, disability assistance (PWD benefits), hardship assistance, and PPMB benefits. Income assistance, disability assistance and PPMB benefits are discussed in this part. Note that there are significant differences in eligibility requirements for the three types of income assistance and not all eligibility requirements apply to each type. Eligibility for hardship assistance is discussed in **Section IV: Hardship Assistance**, below.

Employment and Assistance workers are empowered by s. 10 of the EAA to require proof and verification or to independently verify information given by the applicant to determine eligibility. Failure to comply with these requirements, or to notify MHSD of any changes affecting eligibility, may result in the suspension or reduction of benefits.

### ***A. General Eligibility Test for Income, Disability and PPMB Assistance***

Three tests are used to determine eligibility for income or disability assistance: the **asset** test, the **income** test, and the **social** test. The regulations set out most of the qualifying criteria as well as the types and rates of assistance.

#### **1. Asset Test**

The EAR and the EAPWDR list the maximum assets applicants can possess before they become ineligible for income assistance. Assets are divided into cash assets and other general assets.

Applicants who are ineligible for income assistance because they fail the asset test are not automatically disqualified from eligibility for hardship assistance. See EAR s. 46 and EAPWDA s. 41.

##### ***a) Cash Asset Limits***

A cash asset is defined in s. 1 of the EAR as:

1. money in the possession of a person or the person's dependant;
2. money standing to the credit of the person or the person's dependant with a savings institution or a third party that must pay it to the person or the dependant on demand;
3. the amount of a money order payable to the person or the dependant; or

4. the amount of an immediately negotiable cheque payable to the person or the dependant.

Single applicants are permitted to have cash assets amounting to less than their eligible monthly income assistance benefit plus \$150. For example, if a single person's eligible monthly income assistance benefit is \$510, he or she is permitted to have less than that (i.e. \$509) plus \$150 for a total maximum of \$659 in cash assets. Family units are permitted to have cash assets amounting to less than their eligible monthly income assistance benefit plus \$250.

If an applicant's cash assets exceed his or her maximum limit and the applicant is otherwise eligible for income assistance, the amount of the excess cash will be deducted from the applicant's first assistance cheque.

**b) *General Asset Limits***

The following table shows the maximum amount an applicant or recipient in a particular category may possess before becoming ineligible for income assistance (see s.11(2) EAR).

<b>Applicant</b>	<b>Maximum Allowable Assets</b>
Single person	\$1,500
Single parent	\$2,500
Couple	\$2,500
Single PWD	\$3,000
Single PWD parent	\$5,000
PWD couple	\$5,000

**c) *Exemptions from Asset Calculation***

Schedule B of both the EAR and the EAPWDR lists income and assets that are exempt. EAR s. 11(1) and EAPWDR s. 10 state that for the purpose of determining eligibility for income or disability assistance, the following are not considered assets:

1. clothing and necessary household equipment;
2. one motor vehicle generally used for day to day transportation needs if
  - a) the equity in the motor vehicle does not exceed \$5,000;
  - b) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit;
  - c) the motor vehicle is used to transport a disabled dependent child; or
  - d) the motor vehicle is used to transport
    - i. a disabled child in the home of a relative; or
    - ii. a disabled foster child, if the child is in the care of the applicant or recipient (B.C. Reg. 235/2003);
3. a family unit's place of residence;

4. money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
  - a) applied to the amount owing on the family unit's current place of residence; or
  - b) used to pay rent for the family unit's current place of residence;
5. a child tax benefit under the Income Tax Act (Canada);
6. a goods and services tax credit under the Income Tax Act (Canada);
7. a sales tax credit under the Income Tax Act (British Columbia);
8. an uncashed life insurance policy with a cash surrender value of \$1,500 or less;
9. business tools;
10. seed required by a farmer for the next crop-year;
11. basic breeding-stock held by a farmer at the date of application for income assistance, and female stock held for stock replacement;
12. essential equipment and supplies for farming and commercial fishing;
13. fishing craft and fishing gear owned and used by a commercial fisher;
14. prepaid funeral costs;
15. individual redress payments granted by the government of Canada to a person of Japanese ancestry;
16. individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
17. individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
18. individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
19. money from a lump-sum settlement paid or payable by the government of British Columbia 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;
20. money paid under the 1986 - 1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under s. 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
21. an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;

22. money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
23. post adoption assistance payments provided under s. 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
24. for a recipient who is participating in a self-employment program funded or established by the minister under s. 7 of the Act,
  - a) up to a maximum of \$5,000 kept by the recipient in a separate account described in s. 4 (2)(b)(ii) of Schedule B; and
  - b) up to a maximum of \$50,000, or a greater amount approved by the minister, consisting of
    - i. the value of assets used by the recipient in operating a small business under the self-employment program; and
    - ii. a loan that is not greater than the amount contemplated by the recipient's business plan, accepted by the minister under s. 77.2 of this regulation, and received and used for the purposes set out in the business plan (B.C. Reg. 462/2003);
25. assets exempted under s. 12 (2) (asset development accounts) or 13 (2) (assets held in trust for person in special care facility);
26. payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
27. payments granted by the government of British Columbia under s. 8 of the Child, Family and Community Service Act (agreement with child's kin and others);
28. payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program (B.C. Reg. 115/2003);
29. payments granted by the Government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program (B.C. Reg. 209/2003);
30. payments granted by the Government of British Columbia under an agreement referred to in s. 93 (1)(g)(ii) of the Child, Family and Community Service Act, for contributions to the support of a child to a person other than a parent of that child (B.C. Reg. 209/2003).
31. 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 (B.C. Reg. 22/2005);
32. funds held in a registered education savings plan. (B.C. Reg. 305/2005).

33. payments provided by Community Living B.C. to assist with travel expenses for a recipient in the family unit to attend self-help skills program, or a supported work placement program, approved by Community Living B.C.;
34. a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
35. 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;
36. funds held in a registered disability savings plan;
37. a working income tax benefit provided under the Income Tax Act (Canada);
38. the low income climate action tax credit under section 8.1 of the Income Tax Act;
39. the climate action dividend under section 13.02 of the Income Tax Act;
40. 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.

Note that s. 11(3) of the EAR allows the Minister to authorize one or more of the following:

1. for a family unit that includes a person who qualifies as PPMB or a person who is 65 years of age or older, the total cash surrender value of an uncashed life insurance policy is considered not to be an asset for a period specified by the Minister; and
2. saleable acreage and buildings owned by an applicant or recipient are to be treated as though they are the place of residence of the applicant's or recipient's family unit for a period specified by the Minister.

Section 12(1) of the EAR provides an asset exemption for a bank account in an Asset Development Account program, which is a "saving program designed to assist individuals to save for the purposes of future self-sufficiency or future enhanced self-sufficiency". An account in such a program is not an asset. However, if the recipient stops participating in the program and does not use all or part of the money in the account for the purposes specified under the program, the money in the account on the date the recipient ceases to participate in the program is considered an asset.

**NOTE:** Some compensation payments may continue to be exempt even after they are converted to a non-exempt asset (e.g. an RRSP) as long as the recipient can clearly document the origin of the payment.

**d) *Assets in Trust for Persons with Disabilities or Receiving Special Care***

Under s. 12 of the EAPWDR and s. 13 of the EAR, a person with disabilities, an applicant for PWD status, or a person receiving accommodation in a private

hospital or special care facility other than a drug or alcohol treatment centre, or to whom section 11 (2.1) applies, can be the beneficiary of a trust in real or personal property valued up to \$100,000 without being disqualified from income assistance. The Minister may set a higher limit for persons whose circumstances mean that their lifetime disability-related costs exceed that amount. Payments from the trust are exempt from the asset test if they are applied exclusively to disability-related costs up to a maximum of \$5,484 per year. See EAR, Schedule B, s. 7(d).

## 2. Income Test

Before receiving income assistance, applicants must use all other income to support themselves and their dependants, except income specifically exempted by legislation or policy. Applicants are not eligible for temporary assistance for any month in which their net income exceeds the applicable amount of temporary assistance benefits after allowable exemptions and deductions have been calculated. However, the applicant may be eligible for hardship assistance.

The MHSD distinguishes between earned and unearned income for the provision of income assistance.

### a) *Earned Income*

EAR s. 1 and EAPWDR s. 1 define “earned income” as:

1. any money or value received in exchange for work or the provision of a service;
2. tax refunds;
3. pension plan contributions that are refunded because of insufficient contribution to create a pension;
4. money or value received from providing room and board at a person’s place of residence; or
5. money or value received from renting rooms that are common to and part of a person’s place of residence.

Earned income is **deducted dollar for dollar** from a recipient’s monthly cheque, subject to the exemptions below.

### b) *Exemptions to Earned Income*

Schedule B of the EAR lists various exemptions to income and assets. The following are exempt from deduction as earned income:

1. any income earned by a dependent child attending school on a full-time basis;
2. the basic family care rate paid for foster homes;
3. income assistance paid for a child in the home of a relative (EAA s. 6);
4. a family bonus, except the portion treated as unearned income under EAR Schedule B, s. 10(1);
5. the basic child tax benefit;

6. a goods and services tax credit under the Income Tax Act (Canada);
7. a sales tax credit under the Income Tax Act (British Columbia);
8. individual redress payments granted by the government of Canada to a person of Japanese ancestry;
9. individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus (HIV);
10. 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;
11. individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
12. money from a lump-sum settlement paid or payable by the government of British Columbia to a person awarded compensation by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf;
13. the B.C. earned income benefit;
14. money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except for money paid or payable under s. 4.02 or s. 6.01 of Schedule A or Schedule B or that agreement;
15. a rent subsidy provided by the government of British Columbia or by a council, board, society or government agency that administers rent subsidies from the government of British Columbia;
16. an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
17. money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
18. post-adoption assistance payments provided under s. 28(1) or s. 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
19. a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
20. payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
21. payments granted by the government of British Columbia under s. 8 of the Child, Family and Community Service Act;
22. payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

23. payments granted by the Government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;
24. payments granted by the Government of British Columbia under an agreement referred to in s. 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child to a person other than the parent of that child (Out of Care payments);
25. a loan that is not greater than the amount contemplated by the recipient's business plan, accepted by the minister under EAR s. 77.2, and received and used for the purposes set out in the business plan;
26. payments granted by the government of British Columbia under the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program or Autism Funding: Ages 6 – 18 Program;
27. that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
28. 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 s. 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; and
29. a refund provided by the Fair PharmaCare program of the Ministry of Health.
30. payments provided by Community Living B.C. 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 B.C.;
31. a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
32. 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;
33. money withdrawn from a registered disability savings plan;
34. a working income tax benefit provided under the Income Tax Act (Canada);
35. the low income climate action tax credit under section 8.1 of the Income Tax Act,
36. the climate action dividend under section 13.02 of the Income Tax Act,
37. 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.

**c) *Unearned Income***

EAR s. 1 and EAPWDR s. 1 define unearned income as any income that is not earned, including, without limitation, money or value received from any of the following:

1. money, annuities, stocks, bonds, shares and interest-bearing accounts or properties;
2. cooperative corporations as defined in the Real Estate Development Marketing Act;
3. war disability pensions, military pensions, and war veterans' allowances;
4. insurance benefits, except insurance paid as compensation for a destroyed asset;
5. superannuation benefits;
6. any type or class of Canada Pension Plan benefits;
7. Employment Insurance benefits;
8. union or lodge benefits;
9. financial assistance provided under the EAPWDA or provided by another province or jurisdiction;
10. benefits, disability payments, or pensions from the Workers' Compensation Board;
11. widows' or orphans' allowances;
12. a trust or inheritance;
13. rental of tools, vehicles or equipment;
14. rental of land, self-contained suites, or other property except the place of residence of an applicant or recipient;
15. interest earned on a mortgage or agreement for sale;
16. maintenance under a court order, separation agreement, or other agreement;
17. education or training allowances, grants, loans, bursaries, and scholarships;
18. a lottery or a game of chance;
19. awards of compensation or benefits under the Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85 or the Crime Victim Assistance Act, S.B.C. 2001, c. 38 other than an award paid as compensation for a destroyed asset;
20. any other financial awards or compensation;

21. federal Old Age Security and Guaranteed Income Supplement payments; and
22. financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the Immigration and Refugee Protection Act, R.S.C. 2001, c. 27 or the old Immigration Act.

**d) Exemptions to Unearned Income**

Most unearned income is fully deductible. The EAPWDR, Schedule B, s. 7 exempts the following:

- (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 11 L[asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if: (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484 and;
- (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 = 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 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; and 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.

The Minister also has discretion to exempt all or part of training allowances or grants, bursaries, and scholarships (Schedule B, s. 8). Deductions and exemptions apply only to the month in which the income is actually received (Schedule B, s. 9); they are not applied retroactively or prorated prospectively.

**3. Social Test**

Applicants are eligible for income assistance only after they take full advantage of every source of income, asset, or other means of support that is or might become available to them or to their dependants. (See EAA ss. 13-14, EAR ss. 29 and 31, EAPWDA ss.12-13, and EAPWDR ss. 25 and 27.)

If an applicant or his or her dependants fail to do this, the Minister can reduce the amount of assistance granted to the family unit or declare the family unit ineligible for a period set by the regulations. Most periods of ineligibility are for specific lengths of time. Some ineligible

persons may be considered for hardship benefits if they agree to repay the amount they receive. **Section IV** of this chapter discusses eligibility for hardship assistance.

***B. Age Requirements***

Generally, recipients must be 19 years of age. However, applicants under 19 who can show that their parents are not supporting them **may** be eligible for income assistance. For disability assistance, recipients must be 18 years of age.

***C. Citizenship Requirements***

Under s. 7 of the EAR and s. 6 of the EAPWDR, recipients of income assistance or disability assistance must either be Canadian citizens, landed immigrants, Convention refugees, on a Temporary Resident Permit, refugee claimants, or under a removal order that cannot be executed.

In family units where the applicant meets citizenship requirements but the adult dependant does not, assistance and supplements may be issued for the remaining family members. An adult dependant who does not meet the citizenship requirements will be excluded when determining the family unit's rate of assistance and benefits but will be included in the determination of the family unit's income and assets.

***D. Residency Requirements***

Applicants are not required to reside in British Columbia for any amount of time prior to applying for income assistance. People from other provinces can apply for income assistance immediately upon arrival in British Columbia.

EAR s. 17 disqualifies recipients who have left the province for more than 30 days in a calendar year, unless the Minister pre-authorizes continuation of income assistance to avoid undue hardship or to permit the recipient to obtain medical therapy or participate in an educational program. Disqualified recipients can reapply for income assistance when they return to British Columbia.

***E. Transients, Emergency Shelters and Transition Houses***

Section 1 of the EAR defines "transient" as a person who

- (a) has no dependent children;
- (b) has no fixed address; and
- (c) in the minister's opinion, is not taking up permanent residence in the community in which the person submits an application for income assistance.

Transient persons may qualify for the cost of housing in a hostel and food (EAR, Schedule A, s. 10). A family unit staying in emergency shelters or transition houses may be covered for the actual cost of accommodation and care as well as a comfort allowance calculated for the family unit of the applicant (EAR, Schedule A, s. 9).

***F. First Nations***

First Nations persons living on a reserve must seek income assistance benefits through the Band Social Development Program, administered by the Department of Indian and Northern Affairs.

For First Nations persons living off a reserve, the usual policies and procedures for granting income assistance through the MHSD apply.

### ***G. Past Financial Independence Requirement***

EAR s. 18 states that applicants must show that they have been financially independent for two consecutive years at any point in the past. This usually involves:

- working for 840 hours a year for two consecutive years;
- earning at least \$7,000 a year for two consecutive years; or
- working for part of two years and collecting Employment Insurance or another income replacement (excluding income assistance or a training allowance) for the rest of the time.

The above does not apply to persons who:

- a) are under 19 years of age;
- b) are pregnant;
- c) qualify as PPMB;
- d) live with and care for a spouse with a disability that prevents the applicant from working;
- e) have dependent children of any kind;
- f) have recently left an abusive relationship and this has affected their ability to work;
- g) were supported by an employed spouse or supported by a combination of an employed spouse and other benefits for two years;
- h) have a medical condition that has prevented them from working for at least six of the last 24 months or will prevent them from working for the next 30 days;
- i) have earned a two-year certificate or diploma, bachelor's degree, or post-graduate degree;
- j) were in the care of or had a youth agreement with the Child Family and Community Service Act until the age of 19; or
- k) were in prison for six of the last 24 months.

It should be noted that Ministry staff have discretion to grant an exemption to this requirement in circumstances where undue hardship would occur.

### ***H. Length of Eligibility***

EAR s. 27 states that recipients classified as employable (see **Section II: Categorization of Applicants**) will only be eligible for benefits for a total period of 24 months out of every 60 months. This works out to about two years out of every five years, but it is calculated month by month. If an applicant receives benefits for a few months, works for a few months, and then receives benefits again, only the months in which assistance was received will count toward the 24-month limit. This time limit may apply to any assistance received after April 1, 2002. It is expected that very few people will be affected by the time limit.

## **1. Exemptions from the 24-Month Time Limit**

There are various exemptions from the time limit, and certain months do not count towards the time limit. A sole recipient who cares for a dependent child, child in the home of a relative (CIHR), special needs child or foster child with a physical or mental condition, where the child's physical or mental condition precludes the recipient from working on average more than 30 hours per week, is excluded from the time limit. Family units that reach 24 months and are compliant with their employment-related obligations are exempt from the consequences. Clients who reach 24 months but leave assistance for reasons other than non-compliance **may** be eligible to reapply.

## **2. Consequences of Reaching the 24-Month Time Limit**

The consequences of reaching the 24-month limit depend on which category the recipient falls into. Single people and couples in which each person has reached the 24-month limit will lose all of their benefits. If only one person in a couple has reached the 24-month limit, the payment will be reduced by \$300 per month. Single parents who have reached the 24-month limit will have their cheque reduced by \$100 per month. Couples with children will have their cheque reduced by \$100 per month, if only one parent has reached the 24-month limit, or by \$200 per month if both parents have reached the limit.

### ***I. Requirement to Complete Orientation and Job Search***

All new applicants, including persons with disabilities, must wait at least three weeks until their appointment to apply for income assistance. During this three-week period, applicants must attend an orientation session and complete a job search. Applicants can do the orientation session in person, at a session organized by MHSD or on the Internet at: [www.weborientation.gov.bc.ca](http://www.weborientation.gov.bc.ca). The online orientation is available in several languages: English, French, Spanish, Chinese (simplified and traditional text, Cantonese and Mandarin audio), Vietnamese, Filipino, Persian, Russian, Polish, Punjabi, and Hindi.

Applicants are not eligible for continued assistance until their Employment and Assistance worker can verify their completion of the three-week job search.

#### **1. Excused from Orientation**

Applicants are excused from attending the orientation session if they:

- a) have a mental or physical disability serious enough to prevent them from completing the session;
- b) are 65 years of age or older;
- c) are applying on behalf of a child in the home of a relative;
- d) have completed an orientation session within 60 days before applying;
- e) do not meet the citizenship requirements; or
- f) would suffer undue hardship.

Applicants with literacy or cognitive barriers and applicants who are undergoing an emergency needs assessment may be excused from attending the orientation session. Instead, Ministry staff may communicate directly to the applicant the information provided in the orientation session.

For applicants who would be eligible for a comfort allowance and for applicants in drug and alcohol facilities, hospitals, and care facilities, the requirement to attend an orientation session and complete a job search may be waived or postponed.

## **2. Excused From the Job Search**

Applicants may be excused from completing a job search if they are 65 or older, if the Minister determines that they would suffer undue hardship, or if they are applying for a child in the home of a relative. Applicants who cannot legally work in Canada, including persons seeking refugee protection status with no permit to work in Canada, are also excused from completing a job search.

Applicants who have left an abusive relationship and are living in a transition house may be allowed to postpone the three-week job search.

## ***J. Requirement to meet Employment-Related Obligations (ERO)***

### **1. Employment Plan**

Recipients who are deemed employable must fulfill their employment-related obligations. Usually this involves the development of an Employment Plan (EP) to help the recipient get off income assistance. Even recipients with barriers to employment, such as drug and alcohol problems or other medical conditions, must follow an EP. However, the EP should be tailored to the abilities and skills of the recipient, with the goal of overcoming his or her barriers to employment. EPs for recipients under the age of 19 focus on the completion of high school. The EP outlines the conditions (activities and expectations) that the client must complete to become employed or more employable and includes a timeframe. The EP may include independent work search, referral to job placement programs, specific training for employment, or other specific services. Recipients must complete an activity report monthly while they are looking for work, and every second month once they obtain work, until they become independent of income assistance.

Certain persons are excused from employment plans. See EAR s. 29(4).

### **2. Self-Employment Program**

The Self-Employment Program, introduced in September 2004, is available only to PWD and PPMB recipients and their spouses. It allows the recipient to deduct business expenses, accumulate a certain amount of assets, and obtain loans that are exempted from income. Because the Self-Employment Plan allows for long-term support, it has no time limits. (See the online resource at: [www.gov.bc.ca/meia/online\\_resource](http://www.gov.bc.ca/meia/online_resource)).

### **3. Voluntary Participation Plan**

Recipients with no employment-related obligations may still develop a Voluntary Participation Plan (VPP). There is no obligation to follow the plan and no consequences if they do not fulfill any of the conditions. However, recipients with a VPP will have access to certain services offered by MHSD that recipients without a VPP cannot access. (See the online resource at: [www.gov.bc.ca/meia/online\\_resource](http://www.gov.bc.ca/meia/online_resource)).

## ***K. Discrimination (See Chapter 19: Human Rights)***

The B.C. Human Rights Code, R.S.B.C. 1996, c.210, prevails when there is a conflict with any other enactment (s. 1.2). Section 3(1) of the Code states:

No person, without a bona fide and reasonable justification, shall

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public; or
- (b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

The Canadian Charter of Rights and Freedoms prohibits discrimination on the grounds listed in s. 15(1) and on analogous grounds defined by constitutional case law. Laws that are found to be inconsistent with the provisions of the Constitution are, to the extent of the inconsistency, of no force and effect (Constitution Act, s. 52). It can be argued that any discrimination occurring under income assistance legislation is inconsistent with the Charter or with the B.C. Human Rights Code.

### **1. Rental Accommodation**

The Residential Tenancy Act, S.B.C. 2002, c.78, s. 48.1(1) prohibits landlords from refusing to rent to a potential tenant based on his or her source of income. The remedy is to register a complaint with the Human Rights Commission.

See **Chapter 13: Landlord and Tenant Law** for more information.

## **IV. HARDSHIP ASSISTANCE**

Applicants who do not qualify for a regular monthly allowance under the EAA or EAPWDA might still qualify for hardship assistance, which is covered in Part 2, s. 5 of the EAA and in ss. 39 - 47.1 of the EAR. For example, applicants who do not meet citizenship requirements, who have excess income or assets, or who are on strike or locked out may be eligible.

Hardship assistance is provided only for the month in which it is applied. Applicants who are still in need the following month must apply again. Schedule D of the EAR lists the maximum rates of hardship assistance. Section 1 states that nothing entitles applicants in this category to a specific amount of hardship assistance, and that the actual amount is at the discretion of the Minister, based on the financial need of the applicant. See **Section VII.B: Table 6** in this chapter for hardship assistance rates.

Recipients can receive hardship assistance for only three consecutive months if their income or assets are in excess of the maximum allowable limits, if they have no S.I.N. card or other identification, or if they are awaiting other income (EAR, s. 39). They must then wait another three months before reapplying. However, the MHR policy manual allows for exceptions in circumstances that would result in undue hardship.

The Minister may require that applicants for hardship assistance enter an agreement to repay any assistance received under s. 5 of the EAA.

### **A. Citizenship**

Under EAR s. 42.1, applicants who do not meet citizenship requirements may still receive hardship payments in certain circumstances. See the legislation for details.

***B. Social Insurance Number or Proof of Identification***

If a family unit is not eligible for income assistance because of failure to provide a social insurance number (S.I.N.) or other identification, EAR s. 41 authorizes hardship assistance if undue hardship will otherwise occur and the applicant is making every effort to supply the S.I.N. or proof of identity.

***C. Assets***

Under EAR s. 46, applicants who are ineligible for income assistance because their assets exceed the maximum allowable limits (see **Section III.A.1: Asset Test**, above) may still receive hardship assistance if:

- (a) undue hardship would otherwise occur;
- (b) the applicant provides the type of security specified by the Minister for the repayment of the hardship assistance;
- (c) the assets that caused the family unit to be ineligible are not immediately available to meet the family's basic needs, and every effort is being made to sell the assets; and
- (d) the family unit includes one or more dependent children, or includes only persons who are 65 years or older, or persons who have persistent multiple barriers to employment.

Applicants may be ineligible for hardship assistance if they fail to pursue or accept assets, or if they dispose of assets without adequate consideration or to reduce assets. See **Section V: Situations That May Affect Eligibility**, below.

***D. On Strike or Locked Out***

Under EAR s. 45, union employees who are on strike or locked out may be eligible for hardship assistance only if:

- (a) undue hardship would otherwise occur;
- (b) the applicant provides the type of security specified by the Minister for repayment of the hardship assistance; and
- (c) the financial assistance the applicant is eligible for from his or her trade union, combined with other resources of the family unit, is inadequate to meet the basic needs of the family unit.

***E. Waiting for Employment Insurance or Other Sources of Income***

Someone who has applied for income from another source that is not yet available may be entitled to hardship assistance. Section 43 of the EAR authorizes the Minister to provide hardship assistance to a person who is waiting to find out if he or she is eligible to receive EI. The applicant will be eligible for hardship assistance only if the Minister considers that undue hardship would otherwise occur and the applicant provides the type of security specified by the Minister for the repayment of the hardship assistance. Subsequent EI cheques will show monthly deductions paid to MHR as a result of the hardship loan.

***F. Other Income***

Applicants are not eligible for income assistance if they or their dependants are actually receiving other income, such as EI, in an amount higher than the amount they would receive on the basic

allowance (see EAR, s. 10). Section 44 of the EAR authorizes the Minister to provide hardship assistance only if:

- (a) the Minister considers that undue hardship will otherwise occur;
- (b) the applicant provides the type of security specified by the Minister for the repayment of the hardship assistance;
- (c) the family unit includes one or more dependent children; and
- (d) the income that causes the family unit to be ineligible for income assistance could not, in the Minister's opinion, reasonably be used to meet the family unit's basic needs.

### ***G. Disqualification for Fraud***

Section 47 of the EAR states that the Minister may provide hardship assistance to a family unit that is ineligible for income assistance as a result of a conviction or acknowledgment of fraud or false or misleading representations under a former Act (see s. 38 of the EAR and **Section VII: Rates and Assistance** of this chapter) if:

- (a) the family unit includes one or more dependent children;
- (b) the Minister considers that undue hardship will otherwise occur; and
- (c) the applicant provides the type of security specified by the Minister for the repayment of the hardship assistance.

Section 47.1 of the EAR states that if the Minister considers a family unit that is ineligible for assistance due to fraud may be granted hardship benefits when the family would otherwise experience undue hardship and the physical health of a person in the family is in imminent danger.

### ***H. Exempt Income and Assets***

Schedule D of the EAR lists income and assets that are exempt from the calculation of income and assets for the purpose of calculating the maximum amount of hardship benefits an applicant can receive. Note that some forms of income that are exempt when calculating income assistance or disability benefits are not exempt for the purpose of calculating hardship benefits.

## V. SITUATIONS THAT MAY AFFECT ELIGIBILITY AND BENEFITS

### A. *Failure to Accept or Pursue Income or Assets and Disposing of Property*

The EAA s. 14 (s. 13 of the EAPWDA) and s. 31 of the EAR (s. 27 of the EAPWDR) outline the sanctions available to the Minister for applicants who fail to pursue income or assets or who dispose of property.

#### *Income- or Asset-Related Sanctions*

TYPE OF SANCTION	CONSEQUENCE	PERIOD OF TIME
Failure to pursue or accept income, assets, or other means of support that is still available.	The Minister may impose ineligibility.	Until income, assets, or other means of support are accepted or pursued.
If income, assets or other means of support are no longer available.	The Minister may impose: <ul style="list-style-type: none"> <li>• ineligibility for singles or couples without dependent children;</li> <li>• \$100 per month rate reduction for one-parent families; or</li> <li>• \$200 per month rate reduction for two-parent families.</li> </ul>	One calendar month for each \$2,000 of the value of the foregone income, asset or other means of support (See <u>Period of Time</u> ).
Disposal of property for inadequate consideration (less than the actual or market value).	The Minister may impose: <ul style="list-style-type: none"> <li>• ineligibility for singles or couples without dependent children;</li> <li>• \$100 per month rate reduction for one parent families; or</li> <li>• \$200 per month rate reduction for two-parent families.</li> </ul>	One calendar month for each \$2,000 of the value of the foregone income, asset, or other means of support (See <u>Period of Time</u> ).
Disposal of property to reduce assets (intentionally disposed of to reduce assets).	The family unit is ineligible.	Two calendar months for each \$2,000 of the foregone asset or other means of support (See <u>Period of Time</u> ).

Source: B.C. Online Resource – Verification and Eligibility; Sanctions. ([www.gov.bc.ca/meia](http://www.gov.bc.ca/meia))

### B. *Failure to Comply with Employment-Related Obligations or Employment Plan*

Under EAA s. 13 (EAPWDA, s. 12) and EAR s. 29 (EAPWDR, s. 25), the Minister may reduce assistance to family units that include dependent children and may declare a family unit with no dependent children ineligible for a period set by regulation, if the recipient or an adult dependant:

- a) fails to accept suitable employment;
- b) voluntarily leaves employment without just cause;
- c) is dismissed from employment for just cause; or
- d) fails to demonstrate reasonable efforts to search for suitable employment.

Suitable employment is not defined in the income assistance legislation, but an MHSD operational directive defines suitable employment as “available employment which the person is able to perform, that pays at least the minimum wage, and which will maximize the person’s independence from assistance”.

***Employment-Related Sanctions***

<b>TYPE OF SANCTION</b>	<b>CONSEQUENCE</b>	<b>PERIOD OF TIME</b>
Failure to comply with an Employment Plan.	The family unit is ineligible (when there are no mitigating circumstances for the non-compliance).	The family unit’s file is closed.  If a person or family reapplies for assistance at a later date, they must satisfy all application requirements including the three-week work search.
Failure to accept suitable employment; or  voluntarily leaving employment without just cause; or  dismissal for just cause.	Singles and couples are ineligible.  Family units with dependent children are subject to a \$100 per month rate reduction for each applicant or recipient that is subject to the sanction.	Two calendar months from whichever is later:  the date of application for assistance; or  the date the default occurred.
Failure to demonstrate reasonable work search.	Singles and couples are ineligible.  Family units with dependent children are subject to a \$100 per month rate reduction for each applicant or recipient that is subject to the sanction.	One calendar month from whichever is later: the date when the default occurred, or the date when the Minister becomes satisfied the recipient is demonstrating reasonable efforts to search for employment.

Source: B.C. Online Resource – Verification and Eligibility; Sanctions. ([www.gov.bc.ca/meia](http://www.gov.bc.ca/meia))

***C. Termination of Employment: Quitting or Being Dismissed***

The above employment-related sanctions do not apply to recipients listed in EAR s. 29(4). As noted above, a person **may** be declared ineligible for assistance if he or she leaves employment without just cause or is dismissed for just cause. Leaving employment for just cause, however, does not result in ineligibility.

Just cause is not defined in the legislation, but the MHSD operational directive states that just cause includes:

- a) a physical or mental condition which precludes maintaining employment;
- b) sexual or other harassment;
- c) discrimination;
- d) dangerous working conditions;
- e) following a spouse to new employment;

- f) leaving an abusive or violent domestic situation;
- g) having to care for a child or other immediate family member who has a mental or physical condition which requires the person to care for them; and
- h) reasonable assurance of another job.

Single persons and couples with no dependent children who leave a job without just cause or who are dismissed from a job with just cause are ineligible for income or hardship assistance for two months. If the family unit does include dependent children, the recipient's income assistance will be reduced by \$100 for two months.

#### ***D. Labour Disputes***

Applicants are not eligible for income assistance or disability assistance if they or their adult dependant is on strike or locked out (EAR s. 14 and EAPWDR s. 13).

An applicant may qualify for hardship assistance under s. 45 of the EAR (See **Section IV.D: On Strike or Locked Out**, above).

#### ***E. Leaving the Province***

Recipients who leave British Columbia for more than a total of 30 days in a calendar year cease to be eligible for income assistance (EAR, s. 17 and EAPWDR, s.15).

If a recipient wishes to leave the province for more than 30 days in a calendar year, he or she should try to obtain prior authorization for continued assistance. The Minister has discretion to authorize absences required to avoid undue hardship, to allow participation in a formal education program, or to obtain medical therapy that has been prescribed by a medical practitioner.

#### ***F. Sponsorship***

An applicant who is a Canadian citizen or permanent resident may have been sponsored by a party who is obligated to support the applicant. Since sponsors are a possible source of income, the applicant is responsible for establishing that support is no longer available. An exception is made if there is a concern about the possibility of abuse, in which case MHSD will not contact the sponsor.

Until the sponsorship issues regarding support have been resolved, the applicant is ineligible for income assistance but may be eligible for hardship assistance. Any contribution received from a sponsor is considered unearned income and is deducted from benefits. If the applicant resides with his or her sponsor, shelter allowances will not be paid unless the sponsor is also receiving income assistance.

When a sponsor is in default of the Undertaking of Assistance, the sponsor must repay to MHSD any payments made to the applicant. This debt remains outstanding even after the case is closed.

#### ***G. Maintenance Assignment***

A recipient or applicant must assign any maintenance rights to MHSD. Section 20 of the EAR states that this is an eligibility requirement. Clients who are planning to apply for maintenance orders, or who merely have the right to do so because of their particular domestic situation, must assign these rights. Part 2, Division 4 of the EAR explains this requirement as does s. 43 of Part 5 of the EAA. Clients who may be in the position of paying maintenance should also be made aware of this Ministry requirement (see **Section L: Separated From Supporting Spouse: Maintenance**).

## ***H. Eligibility Audits***

Section 10 of the EAA discusses what the Minister may do when auditing a recipient. For the purposes of auditing eligibility s. 34 of the EAR allows the Minister to require the recipient to attend in person and/or to complete a form prescribed by the Minister. Recipients who must complete a form but are not required to attend in person must deliver the form within 20 business days after being notified. Delivery of the form may be made by leaving it with an employee in the MHSD office or by mailing it to that office. Section 34.1 of the EAR deals with the eligibility audit for income assistance under section 6 (child in the home of a relative).

## ***I. Periods of Ineligibility***

Applicants, recipients and adult dependants may be declared ineligible for income assistance or disability assistance. The ineligibility applies to the entire family and is usually for specific lengths of time. Some ineligible persons may be considered for hardship assistance if they agree to repay. Refer to **Section IV: Hardship Assistance** when consulted by a client who is ineligible for other benefits.

Always read the applicable section in the legislation and advise your client of his or her right to appeal.

## ***J. Overpayments, Repayments and Assignments***

When overpayments have been made, the legislation provides for recovery of income assistance or benefits paid to an individual not entitled to them by way of deduction from subsequent payments of income assistance, or as a debt owed to the Crown.

Subject to the regulations, the Minister may enter into an agreement for repayment of income assistance by the recipient, or may accept any right assigned for the repayment of the income assistance, hardship assistance, supplements or similar programs.

The Minister's decision about the amount the person must repay for overpayments, for repayment agreements or for assignment of rights, is **not open to appeal** (EAA, s. 27(2) and EAPWDA, s. 18(2)).

**NOTE:** Clients have the right to a decision explaining the basis for an alleged overpayment and the right to an appeal if they disagree with the decision that they were overpaid as alleged. Ensure the client is not coerced or pressured into signing a Ministry form acknowledging a debt, and agreeing to repay the amount allegedly owed.

### **1. Overpayments**

If a family unit receives income assistance, hardship assistance or a supplement that it is not entitled to, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay that amount (EAA, s. 27 and EAPWDA, s. 18). It may be recovered through court proceedings or deducted from any subsequent assistance, hardship, supplement, or from an amount payable to the person by the government under a prescribed enactment (EAA, s.28).

See **Section VI: Non-Disclosure and Fraud**, below for other steps the Ministry may take to recover overpayments when the applicant or recipient knowingly misrepresented his or her circumstances.

### **2. Repayment Agreements**

A repayment agreement is a contract acknowledging the overpayment of benefits or recoverable payments and the recipient's intention to repay benefits issued by the Ministry.

Examples of recoverable payments are those made to individuals who have applied for and are waiting for EI, OAS or CPP benefits. Eligibility for hardship assistance may depend on the recipient signing a repayment agreement. Also, a person receiving reinstated assistance pending an appeal must sign an agreement to repay the amount of discontinued or reduced assistance or supplement if the final decision confirms the Ministry's original decision to discontinue or reduce the assistance or supplement.

When a repayment agreement has been signed and the method of recovery is deduction from future benefits, the MHSD policy manual requires the employment and assistance worker to ensure that the deduction does not cause hardship. However, the total amount of repayment cannot be reduced; only the monthly amount of the repayment can be varied (i.e. the debt cannot be forgiven, only deferred). The minimum amount that may be deducted is \$10 each calendar month.

### 3. Assignments

#### a) *Security Deposits*

Pursuant to EAR s. 58, the director may provide security deposits required under the Residential Tenancy Act on behalf of a recipient of regular assistance or hardship assistance if the security deposit is necessary to enable the family unit to rent residential accommodation; the recipient is required to agree in writing to repay the amount paid, and the security deposit cannot exceed 50 percent of one month's rent (see **Section VIII: Additional Allowances and Benefits**).

Prior to April 1, 2002 The applicant would fill out an "Assignment of Security Deposit" form at the same time the security deposit was issued. MHSD paid the security deposit by cheque either to the applicant or to the landlord. The Ministry would send a copy of the assignment form to the landlord, so the landlord will be aware that he or she must return the security deposit to the Ministry, not to the applicant when the tenancy ends.

The EAR now imposes additional limitations for all security deposit supplements received after April 1, 2002. First, a recipient may only have two outstanding deposits; any more and a further deposit will be denied. Security deposits issued before April 1, 2002 will not count toward this limit. Possible exceptions to the limitation may be made for applicants separating from an abusive spouse or applicants who have been forced to move because their rental accommodation has been condemned, sold, or scheduled for demolition. Second, the Ministry will deduct a minimum of \$20 a month from the assistance cheques of family units with an outstanding security deposit. The security deposit deduction takes precedence over any other deductions from a recipient's cheque.

#### b) *Recipient Awaiting Benefits from Another Agency*

A recipient of income assistance who is waiting for benefits from the Department of Veterans' Affairs or the Workers' Compensation Board, retroactive CPP benefits, Old Age Security, or EI from the Canada Employment and Immigration Commission is required to sign an assignment to receive temporary hardship assistance. The employment and assistance worker will witness the recipient's signature of the assignment form and then forward a copy to both the relevant agency and the Financial Services Division of the Ministry. The agreement allows the agency to repay MHSD from the pending claim.

In the case of a person who is awaiting EI benefits, an Employment Insurance Information form or verification from HRDC that confirms the status of an

individual's EI application must be received before hardship assistance can be issued. As well, he or she must sign an Assignment Benefits form, which allows MHSD to recover income assistance monies from the individual's EI cheques. If the recipient qualifies for more money from income assistance than from EI he or she may be eligible for a top-up from MHSD. The top-up does not have to be repaid.

This procedure is intended to prevent an individual from receiving benefits from both EI and income assistance for the same period of time. The Ministry's right to recover is limited to those weeks for which there would be dual payments.

## ***K. Living With One or More Persons***

### **1. Ministry Definitions**

The MHSD policy manual states that married persons or any persons living in a marriage-like or dependent relationship with or without dependent children will be considered a family unit for the purpose of determining eligibility for income assistance or disability assistance. The following terms are defined in s. 1 of the EAA:

#### ***a) "Dependant"***

"Dependant", in relation to another person, means anyone who resides with the other person and who:

- (a) is the spouse of the other person;
- (b) is a dependent child of the other person; or
- (c) indicates a parental responsibility for the person's dependent child.

Note that the relationship of dependence need not be "one-way". Two spouses are considered mutual dependants of one another.

#### ***b) "Spouse"***

"Spouse" means:

s. 1.1(1) two persons, including persons of the same gender, are spouses for the purposes of this Act if:

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if:

- (a) they have resided together for at least:
  - (i) the previous 3 consecutive months, or
  - (ii) 9 of the previous 12 months, and

- (b) the minister is satisfied that the relationship demonstrates:
- (i) financial dependence or interdependence, and
  - (ii) social familial interdependence consistent with a marriage-like relationship.

**c) “Family unit”**

“Family unit” means an applicant or recipient and his or her dependants.

**2. Shared Accommodation**

When two or more people living together in a shared situation are found to be dependants of one another, they receive benefits as a family rather than individual benefits. Moreover, the assets of any individual in the family unit are deemed available to, and the property of, the entire family unit.

If roommates do not want to be considered a family unit, they must be able to show that they do not share income, assets, or the necessities of life.

**3. “Marriage-Like Relationships”**

This term is not defined in the income assistance legislation. However, if two people are found to be living together in a “marriage-like relationship” they will be considered dependants of one another. They will receive family, as opposed to individual, rates of assistance, and the assets of one will be considered the assets of the other. This applies to same-sex and different-sex partners.

The result may be that the party with no income is ineligible for income assistance, because the assumption is that the party with assets has a responsibility to support his or her partner.

*Falkiner v. Director of Income Maintenance Branch of Community and Social Services* [2002] Docket C35052 (Ont. C.A.) was decided on May 13, 2002. This unanimous Ontario decision ruled that the shared accommodation rule in that province was unconstitutional because it breached recipients’ Charter equality rights. Application for leave to appeal to the Supreme Court of Canada was discontinued as of September 1, 2004. Students should be aware that this decision could affect the law in British Columbia.

**a) *Where Parties Deny Living in a “Marriage-Like Relationship”***

It is not necessary for a couple to share income to qualify as “dependants” of one another. The unspoken criterion for determining dependency between two adults seems to be whether or not they are sleeping together. The criterion is applied to heterosexual and same-sex couples alike.

If a recipient wants to argue that his or her roommate is not a spouse, the following factors are relevant:

- whether the parties have separate bedrooms;
- whether they have separate bank accounts, divide bills, etc.;
- whether have they acknowledged a common law or sexual relationship as existing between them, either socially or for any other purpose;

- whether they share household responsibilities on a consistent basis, i.e. childcare, meal preparation, laundry, shopping, house cleaning, etc.; and
- whether either party has a serious sexual relationship with another person.

If two people can effectively show that they are living together but are not in a conjugal relationship (i.e. they are living as roommates), they will be able to claim individual, rather than family, rates of assistance.

**NOTE:** Some decisions from the old B.C. Benefits Appeal Board may be useful. These decisions are no longer available online, but they can be found in the UBC Law Library.

## ***L. Separated From Supporting Spouse: Maintenance***

Section 20 of the EAR states that recipients **must** assign to the Crown their rights to pursue or respond to legal proceedings involving maintenance for themselves or their dependent children in order to be eligible for income assistance. The Crown then acts under the authority of the Family Maintenance Enforcement Act R.S.B.C. 1996, c.127. If the separated spouse owes money under a maintenance agreement, enactment or court order, the government's lawyers will bring proceedings to enforce compliance.

### **1. Violent/Abusive Spouse**

It is MHSD policy to use discretion in exercising its right under the assignment to pursue maintenance from an abusive ex-partner. If your client is at all concerned that the Ministry's pursuit of maintenance could put her or her dependants at risk, she should tell her employment and assistance worker and insist that the Ministry not confront her ex-partner.

### **2. Shared Parenting Assistance**

When separated parents have a 50/50 custody arrangement, only one parent can claim the child as a dependant. The other parent can receive a shelter allowance, but not a support allowance, as long as the child stays with him or her at least 40 percent of each month. A custody order or shared parenting agreement filed in court is required.

## **VI. NON-DISCLOSURE AND FRAUD**

### ***A. Duty to Disclose Information Affecting Eligibility***

Applicants and recipients of allowances and supplements under income assistance legislation have a duty to provide accurate information about eligibility for assistance and a duty to notify the Minister of any change of circumstances affecting their eligibility or that of a dependant.

EAA s. 10(4) states that the Minister may declare the family unit ineligible for income assistance, hardship assistance, or a supplement for the prescribed period if a person fails to comply with a direction to supply information or verification needed to determine or audit eligibility for assistance. Section 10(5) states that a dependent youth who fails to comply with the above direction may have the amount of income assistance or hardship assistance reduced for the prescribed period.

Section 11 of the EAA requires the recipients to submit regular reports and notify the Ministry of any changes of circumstances or information in the interim. Section 33(1) of the EAR requires that by the

fifth day of each calendar month a report form prescribed under the Forms Regulation, B.C. Reg.315/2005 must be submitted which includes the following information:

- whether the family unit requires further assistance;
- changes in the family unit's assets;
- all income received by the family unit and the source of that income;
- the employment and educational circumstances of recipients in the family unit; and
- changes in family unit membership or the marital status of a recipient.

Please note that recipients must notify the Ministry of all income, including exempt income.

Similar provisions are found in ss. 10-11 of the EAPWDA and ss. 28-29 of the EAPWDR.

Section 31 of the EAA and s. 22 of the EAPWDA, are parallel provisions which provide:

- (1) a person commits an offence who supplies, in an application under the Act or when directed or required under s. 10(1), (2), (3), or s. 11, or the Regulation, information that is false or misleading with respect to a material fact;
- (2) a person does not commit an offence under s-s. (1) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading;
- (3) a person who commits an offence under this section is liable on conviction to a fine of not more than \$2,000, or to imprisonment for not more than six months, or to both; and
- (4) a court may also order a person convicted of an offence under the section to pay the government all or part of any amount that person received under the Act as a result of committing the offence.

Where the MHSD receives information regarding potential fraud or non-disclosure, it will investigate and decide whether to take one or more of the following steps:

1. refer to the Crown for charge approval, either under the Criminal Code, or for an offence under the relevant sections in the EAA;
2. take civil action to recover the overpayment(s);
3. enter into a repayment agreement, where the recipient acknowledges the overpayment(s) of benefits;
4. deduct the overpayment(s) from future benefits; or
5. declare the person ineligible for assistance for three benefit months.

## ***B. False or Misleading Information***

If a client has been charged criminally with fraud, refer them to Legal Aid to apply for a criminal lawyer. If he or she is under investigation or is inquiring about the possible consequences of non-disclosure, advise the client of his or her obligations under the relevant Act and regulations as set out above and of the options available to the Ministry. Advocates can assist clients in making disclosure to the Ministry and in negotiating the terms of repayment. Clients should be warned that more and more

cases are referred to the Crown for subsequent criminal action. The decision between full disclosure and the right to silence is very tricky. Full disclosure to the Ministry may not save the client from criminal prosecution.

## 1. Ineligibility and Reduction Periods for Fraud or Misleading Information

The penalty to family units that include a person or persons who were convicted of or admitted to fraud, false representation, or misleading representation depends upon how many people in the family unit committed an offence. If every member of the family unit committed an offence, the family unit will be ineligible for income assistance for the proscribed period of time. If the family unit includes any other members who did not commit an offence, the amount of income assistance will be reduced for the prescribed period of time. The length of time for ineligibility or reduced assistance increases after each offence (EAR, ss. 35 - 38).

If an applicant has been convicted of or has admitted to fraud under one of the former B.C. Benefits Acts, s. 38 of the EAR states:

- (1) For the purposes of this section, “benefit month” means a month for which, but for this section or a declaration under this section, a person would otherwise be eligible for income assistance or a benefit, and the three benefit months referred to in s-s. (2) and (3) need not be consecutive;
- (2) The family unit of an applicant or recipient is not eligible for income assistance or benefits for three benefit months if the person or an adult dependant
  - (a) was convicted of an offence under s. 22(1) of the B.C. Benefits (Income Assistance) Act, R.S.B.C. 1996, c. 27, s. 11(1), as rep. by the Employment and Assistance Act, S.B.C. 2002, c. 40; s. 51 of the Disability Benefits Program Act, R.S.B.C. 1996, c. 97, as rep. by the Employment and Assistance for Persons with Disabilities Act, S.B.C. 2002, c. 41, s. 41; or s. 13(1) of the B.C. Benefits (Youth Works) Act, R.S.B.C. 1996, c. 28, as rep. by the Employment and Assistance Act, S.B.C. 2002, c. 40, s. 53; or
  - (b) was convicted of an offence under the Criminal Code in relation to obtaining, by fraud or false or misleading representations, money under a former Act, or the Disability Benefits Program Act;
- (3) The Minister may declare a family unit ineligible for income assistance or benefits for three benefit months if a court gives judgment in favour of the government in an action for debt against that person or an adult dependant for obtaining under a former Act or the Disability Benefits Program Act money to which he or she was not entitled, unless the money was paid in error;
- (4) No family unit is, or may be declared, ineligible under this section on the basis of a conviction secured, an acknowledgment made, or a judgment given, before March 13, 1997.

Similar provisions are found in the EAPWDR, ss. 31-34.

## VII. RATES AND ASSISTANCE

### A. Assistance Calculation

Persons who are eligible for income or disability assistance are entitled to the amount determined in Schedule A of the EAR or EAPWDR, minus any non-exempt net income available to the family as determined under Schedule B.

The following information should only be used to estimate the benefits an applicant may be entitled to. Existing rates are subject to change, and the student should refer to the relevant regulations and to the MHS D web site to determine whether any such changes have occurred.

#### 1. Basic Allowance Rates

All rates are monthly.

In addition to the support allowance, families receive a maximum of \$125.92 under the B.C. Basic Family Bonus for each child age two months to 18 years, or a Ministry top-up if the child is ineligible (EAR, Schedule A, s. 2(2)).

A family unit that includes a dependant and a person who has reached 65 years of age and receives federal Old Age Supplement payments is still eligible for support and shelter allowances according to the size of the family unit.

#### Income Assistance (See Schedule A of the EAR)

SUPPORT ALLOWANCE									SHELTER MAXIMUM
UNIT SIZE	A	B	C	D	E	F	G	H	
1	\$235.00	\$282.92	N/A	\$531.42	N/A	N/A	N/A	N/A	\$375
2	307.22	452.06	\$375.58	700.56	\$949.06	\$672.08	\$423.58	\$396.22	570
3	401.06	546.06	375.58	794.56	1043.06	672.08	423.58	490.06	660
4	401.06	546.06	375.58	794.56	1043.06	672.08	423.58	490.06	700
5	401.06	546.06	375.58	794.56	1043.06	672.08	423.58	490.06	750
6	401.06	546.06	375.58	794.56	1043.06	672.08	423.58	490.06	785
7	401.06	546.06	375.06	794.56	1043.06	672.08	423.58	490.06	820

KEY	
<b>A</b>	Employable singles, couples and two-parent families, where all adults are under 65 years of age.
<b>B</b>	Singles, couples, and two-parent families where all adults meets the Persons with Persistent Multiple Barriers (PPMB) criteria and all are under 65.
<b>C</b>	Employable one-parent families where the parent is under 65.
<b>D</b>	Singles, couples and two-parent families where one adult is age 65 or older.
<b>E</b>	Couples, and two-parent families where both adults are age 65 or older.
<b>F</b>	One-parent families where the parent is age 65 or older.
<b>G</b>	One-parent families where the parent meets the Persons with Persistent Multiple Barriers (PPMB) criteria and is under 65.
<b>H</b>	Couples and two-parent families where one adult meets the PPMB criteria and all are under 65.

*Disability Benefits Rates (See Schedule A to the EAPWDR)*

UNIT SIZE	SUPPORT ALLOWANCE				SHELTER MAXIMUM
	A	B	C	D	
1	\$531.42	N/A	N/A	N/A	\$375
2	700.56	\$949.06	\$672.08	\$949.06	570
3	794.56	1043.06	672.08	1043.06	660
4	794.56	1043.06	672.08	1043.06	700
5	794.56	1043.06	672.08	1043.06	750
6	794.56	1043.06	672.08	1043.06	785
7	794.56	1043.06	672.08	1043.06	820

KEY	
<b>A</b>	Singles, couples and two-parent families where one family member is a person with disabilities (PWD), and the other is not a PWD and is under 65.
<b>B</b>	Couples and two-parent families where both adults are PWDs.
<b>C</b>	One-parent families where the parent is a PWD.
<b>D</b>	Couples and two-parent families where one adult is aged 65 years or older but is not a PWD and where one adult is a PWD.

**NOTE:** Under both the EAR and the EAPWDR, the maximum shelter allowance is increased by up to \$195 per month for the duration of the pregnancy if the person

- (a) is a sole recipient without dependants, and
- (b) provides confirmation of pregnancy from a medical practitioner or a registrant of the College of Midwives of British Columbia (Schedule A, s. 4(6)).

**NOTE:** Disability benefits are paid in the month following PWD designation. In cases where designation occurs prior to the applicant's 18<sup>th</sup> birthday, payments begin in the month of the 18<sup>th</sup> birthday.

**B. *Hardship Assistance***

Hardship assistance is based on actual need up to the maximum benefit level. Eligible applicants receive the difference between their current available income or asset and their maximum entitlement according to the following schedule.

**Hardship Rates (See Schedule D of the EAR/EAPWDR)**

<b>FAMILY UNIT COMPOSITION</b>	<b>AGE OF APPLICANT OR RECIPIENT</b>	<b>MAXIMUM AMOUNT OF SUPPORT</b>
Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00
Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age and a person who has persistent multiple barriers to employment	\$282.92
Sole applicant/recipient and no dependent children	Applicant/recipient is 65 or more years of age	\$531.42
Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$375.58
Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age and a person who has persistent multiple barriers to employment	\$423.58
Sole applicant/recipient and one or more dependent children	Applicant/recipient is 65 or more years of age	\$672.08
Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age	\$307.22
Two applicants/recipients and no dependent children	One applicant/recipient is a person who has persistent multiple barriers to employment, the other is not a person who has persistent multiple barriers and both applicants/recipients are under 65 years of age	\$396.22
Two applicants/recipients and no dependent children	Both applicants/recipients are under 65 years of age and both have persistent multiple barriers to employment	\$452.06
Two applicants/recipients and no dependent children	One applicant/recipient is under 65 years of age and the other is 65 or more years of age	\$700.56
Two applicants /recipients and no dependent children	Both applicants/recipients are 65 or more years of age	\$949.06
Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age	\$401.06
Two applicants/recipients and one or more dependent children	One applicant/recipient is a person who has persistent multiple barriers to employment, the other is not a person who has persistent multiple barriers and both applicants/recipients are under 65 years of age	\$490.06
Two applicants/recipients and one or more dependent children	Both applicants/recipients are under 65 years of age and both have persistent multiple barriers to employment	\$546.06
Two applicants/recipients and one or more dependent children	One applicant/recipient is under 65 years of age and the other is 65 or more years of age	\$794.56
Two applicants/recipients and one or more dependent children	Both applicants/recipients are 65 or more years of age	\$1043.06

**C. Shelter Costs**

Recipients are eligible for a monthly shelter allowance equivalent to their actual shelter costs **up to the maximum set out in the previous tables** for the applicable family unit size. Recipients are not eligible for the monthly shelter allowance if they are not paying shelter costs, or if they have received money and interest from the sale of a house or property sufficient to provide for all shelter costs.

**1. Calculation of the Shelter Costs**

EAR and EAPWDR Schedule A, s. 5 set out which items can be included when calculating shelter costs. They are rent, mortgage payments, house insurance premiums, property taxes for the recipient’s own home, utility costs, and the actual cost of maintenance and repairs for the recipient’s own home **if** these costs have been approved.

<b>Family Unit Size</b>	<b>Monthly Shelter Rate (Max.)</b>
1 person	\$375
2 person	\$570
3 persons	\$660
4 persons	\$700
5 persons	\$750
6 persons	\$785
7 persons	\$820
8 persons	\$855

**2. Home Maintenance Costs**

Home maintenance refers to protection, replacement, and repair of essential items that are part of the physical structure of the recipient’s home. This does not include replacement of, or repairs to, appliances or decorative items such as wallpaper and carpeting, or resurfacing of paths and driveways. These costs may be prorated to future months, provided eligibility to include these costs continues.

**3. Utility Costs**

As per EAR and EAPWDR Schedule A, s. 5(1) utility costs include only:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or bi-weekly basis; and
- (f) rental of one basic residential single-line telephone.

## ***D. Living Arrangements***

Where two or more family units share the same place of residence, the actual shelter costs of any one of them are the lesser of:

1. the amount calculated by dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence and multiplying the result by the number of persons in that one family unit; or
2. the amount declared by the family unit as the shelter costs for that family unit.

The two rules above do not apply to a recipient 65 years of age or older who receives Old Age Security (see s. 7(2) of Schedule A). Such an individual is eligible for income assistance at the full rates.

### **1. Income from Room and Board**

Under Schedule A, s. 6 of the EAR, for a family unit receiving room and board other than in a special care facility, emergency shelter, transition house or from a parent or child, the amount of income assistance will be the lesser of the following amounts:

- (a) the sum of
  - (i) the actual cost of the board and lodging;
  - (ii) \$60 per month for the recipient; and
  - (iii) \$40 per month for each dependent child in the family; **or**
- (b) the amount calculated under ss. 1 - 5 of Schedule A for a family matching the applicant's or recipient's family unit.

See **Section VII.A.1: Basic Allowance Rates**, above, for a discussion of the calculation referred to in s-s.(b).

If recipients receive room and board from a parent or child, only the support allowance that is payable to that family unit size shall be paid.

Similar provisions are found in the EAPWDR, Schedule A, s. 6.

### **2. Emergency Shelters and Transition Houses**

Schedule A, s. 9 of EAR and EAPWDR provide that where a family unit is receiving accommodation and care in an emergency shelter or transition house, the amount of income assistance is:

- (a) the actual cost, if any, to the family unit of the accommodation and care at the rate approved by the Minister for the type of emergency shelter or transition house; and
- (b) a comforts allowance of \$95 per month for each person in the family unit.

### 3. Transients

The EAR Schedule A, s. 10 states that the amount of income assistance available to a transient is:

- (a) the cost of housing in a hostel, if one exists in the community; and
- (b) the cost of food.

### 4. Special Care Facility

“Special care facility” is defined in s. 1 of each regulation as a specialized adult residential care setting approved by the Minister or a licensed boarding home, alcohol or drug treatment centre, a personal care facility, or intermediate care facility.

Under Schedule A, s. 8 of EAR and EAPWDR, the Ministry covers the actual cost at the rate approved by the Minister for the type of facility, plus a comforts allowance of \$95 per person per month for people who require such a facility.

As per s.8(2) of the EAR and EAPWDR, if the special care facility is an alcohol or drug treatment centre, the Ministry may pay either or both of

- (a) actual shelter costs for the applicant’s or recipient’s usual place of residence up to the maximum for an equivalent family unit; and/or
- (b) a monthly support allowance for the applicant’s or recipient’s family unit, equal to the amount of the basic monthly support assistance calculated under the Schedule less the portion of that allowance that would be provided on account of the applicant or recipient.

### 5. Child Supported in the Home of a Relative

If a child is supported in the home of a relative other than the child’s parent and no parent of the child is able to pay the total cost of the child’s care, the Ministry will pay income assistance according to the child’s age:

<b>Age Group</b>	<b>Monthly Rate</b>
Birth – 5 years	\$257.46
6 – 9 years	\$271.59
10 – 11 years	\$314.31
12 – 13 years	\$357.82
14 – 17 years	\$402.70
18 years	\$454.32

(less any financial contribution by parents)

See s. 6 of the EAR for the eligibility conditions and Ministerial authority, and Schedule A, s. 11 for the rates.

### ***E. Method of Payment***

Electronic Funds Transfer (EFT) is the standard method of payment to recipients. Exemptions to EFT payment may apply to recipients who:

- 1. have reasonable grounds to believe their accounts will be garnished and some or all of their BCEA funds would be lost if electronically deposited;

2. do not have access to banking facilities in their community or residential institution;
3. have their benefits administered for their health and safety reasons of others (e.g. risk to Ministry workers of violence or verbal abuse);
4. have their benefits administered for health or disability reasons (e.g. mental incapacity); or
5. receive hardship assistance where there is an obligation of assignment/repayment or the type of hardship is limited to three months.

In addition to these exceptions, payments made directly to suppliers (e.g. landlords or CIHR caregivers) are not eligible for EFT.

***F. Lost or Stolen Cheques***

Section 92 of the EAR and s. 77 of the EAPWDR authorize the issuance of a replacement of an unendorsed assistance cheque as long as:

- (a) in the case of theft, the matter has been reported to police; and
- (b) in the case of loss or theft, the recipient
  - (i) makes a declaration of the facts; and
  - (ii) undertakes to promptly deliver the lost or stolen cheque to the Ministry if it is recovered.

## **VIII. ADDITIONAL ALLOWANCES AND BENEFITS**

***A. Emergency Needs Assessment***

Applicants for income assistance can apply for Emergency Needs Assessment to help them through the three-week job search. To qualify for Emergency Needs Assessment, an applicant must be able to show that he or she has an emergency need for food and shelter or a medical need that must be met immediately. The applicant must also be able to tell the Ministry about other resources he or she has tried to use and satisfy the Ministry that there is an emergency that cannot wait until the end of the three-week period to be addressed.

Eligibility for Emergency Needs Assessment results in an “early” application, effectively allowing the applicant to receive assistance immediately, as long as the applicant meets all eligibility requirements. The applicant is still expected to perform the three-week job search once he or she has dealt with the immediate problem of not having shelter or enough food. MHSD policy says that women who have left an abusive relationship should be seen as soon as possible to determine if they need assistance.

***B. Crisis Supplement***

A crisis supplement is not an ongoing monthly benefit but rather a one-time grant for a recipient of regular allowance or hardship who requires an “unexpected item of need” and is unable to obtain it due to lack of money or assets or inability to obtain credit. Crisis supplements do not have to be repaid. Before issuing a crisis supplement, the Minister must decide that failure to obtain that item will result in:

- imminent danger to the physical health of any person in the family unit; or

- removal of a child under the Child, Family and Community Service Act.

The sections authorizing the provision of crisis supplements are EAR s. 59 and EAPWDR s. 57.

Crisis supplements are often used to buy necessities like winter coats, baby cribs, or new appliances. If a recipient loses possessions in a fire, runs out of food or fuel, is threatened with Hydro cut-off, or must make an essential house repair, he or she may ask the Employment and Assistance worker for a crisis supplement.

The EAR changed the rules for crisis supplements. As of April 1, 2002, there are now maximum amounts available for different types of crisis supplements, as well as an annual limit to the amount an applicant can receive. Crisis money for food is limited to \$20 per person each month. Crisis money for clothes is now limited to an annual maximum of \$100 per person or \$400 per family, whichever is less. Crisis grants for shelter are limited to the actual shelter costs up to the maximum shelter rate of the family for one month only. The maximum cumulative total of crisis assistance provided in any 12 month period is the equivalent of two months' assistance for the family unit. The amount of a crisis supplement is not subject to appeal, but the denial of a crisis supplement can be appealed.

**NOTE:** Women in crisis because they cannot afford to move away from an abusive partner may be assisted with moving costs as provided in s. 57(2)(e) of the EAR.

### ***C. Clothing***

#### **1. Work Clothes**

The Ministry may provide up to \$200 for the cost of safety clothing required to participate in an employment-related program if the employment-related program is a workplace training or work experience program (EAR, s. 56(1)(c)).

#### **2. Clothing for Special Care Facilities**

A person confined to a special care facility may apply for a grant to purchase clothing if the facility does not provide any, if there are no funds available from the recipient's comfort allowance, and there are no resources available to the recipient's family unit to pay for the clothing (EAR, s. 53).

### ***D. Employment, Education, and Training Supplements***

Under the EAR ss. 56 and 56.1 an applicant may be eligible for:

1. \$250 - \$1000 for expenses associated with a confirmed job; or
2. \$100+ for employment training courses.

### ***E. Moving Costs***

The cost of moving a family and their belongings from one place to another may be covered by the Ministry under EAR s. 57 and EAPWDR s. 55, if the family unit is eligible for income, disability, or hardship assistance, other than a transient, there are no other resources available to the family unit to cover the costs, and the Minister's approval is received before the costs are incurred. This supplement is only available to assist with one or more of the following:

- (a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;

- (b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
- (c) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the family unit's rented residential accommodation is being sold or demolished, or has been condemned, and notice to vacate has been given;
- (d) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move to another area in B.C. to avoid an imminent threat to the physical safety of any person in the family unit; and
- (f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the Child, Family and Community Service Act, if a recipient is given notice of the hearing and is a party to the proceeding.

The Ministry will only provide for the least expensive appropriate mode of moving and in the case of (f), the least expensive appropriate living costs.

A recipient who has been evicted due to her or his own actions is not eligible for moving costs, but may request a crisis grant under the relevant regulation.

## ***F. Transportation Costs***

### **1. Confirmed Employment in B.C.**

The Ministry may provide up to \$100 for each calendar month to assist with transportation and attendance costs associated with participating in the employment-related program (EAR, s. 56(1)(a)).

### **2. Child Protection Hearing**

Under EAR s. 57(2)(f) and EAPWDR s. 55(2)(f), the MHSD may pay for transportation and living costs required to attend a hearing relating to a child protection proceeding under the Child, Family and Community Service Act, if the recipient is given notice of the hearing and is a party to the proceeding.

## ***G. Bus Pass Supplement***

### **1. Seniors**

Under s. 66(1) of the EAR, a person may receive an annual bus pass from MHSD for personal use if he or she contributes \$45 to the cost and is either 60 years or older and receiving income assistance, or receives the Federal Spouse's Allowance or the Federal Guaranteed Income Supplement, or is 65 years of age or more and meets all of the eligibility requirements for the Federal Guaranteed Income Supplement except the 10-year residency requirement.

## 2. **Persons with Disabilities**

Under s. 51 of the EAPWDR, the Minister may provide a bus pass supplement to a family unit that is eligible for disability assistance and contributes \$45 to the cost to provide an annual bus pass for the personal use of:

- (a) a person with disabilities in the family unit; or
- (b) the spouse of that person if that spouse:
  - (i) is 60 or more years of age;
  - (ii) receives the Federal Spouse's Allowance or Federal Guaranteed Income Supplement; or
  - (iii) is 65 years of age or more and meets all of the eligibility requirements for the federal guaranteed income supplement except the 10-year residency requirement.

## ***H. Community Involvement***

Section 52 of the EAR and s. 47 of the EAPWDR allow the Minister to provide up to \$100 per month for clothing, transportation, and other expenses needed to participate in a Community Volunteer Program to a recipient or a dependant who is:

- a dependant child 15 years of age or older;
- a PWD recipient or dependant unable to participate in the Training Initiatives Supplement Program; or
- excused from seeking employment or participating in an employment plan due to conditions set out in EAR s. 29(4)(b), (e), (f), (h), (i), (iii) or (v) or (i), which refer to:
  1. single parents with a dependent child, child in the home of a relative, or foster child under three years or a child whose physical or mental condition precludes the parent from leaving home for employment;
  2. persons who receive accommodation and care in a special care facility or private hospital;
  3. applicants or recipients admitted to hospital because they require extended care;
  4. persons who reside with and care for a spouse who has a physical or mental condition that, in the Minister's opinion, precludes the person from leaving home for the purpose of employment;
  5. persons participating in an approved treatment or rehabilitation program, which interferes with their ability to search for, accept, or continue employment;
  6. person who have separated from an abusive spouse or relative within the previous six months if this interferes with employment seeking or participation;
  7. persons who have persistent multiple barriers to employment;
  8. children in the home of a relative; and
  9. persons who have reached 65 years of age.

It is important to note that the supplement is only provided to one person in a family unit at a time (EAR, s. 52(2)).

## ***I. Security Deposits***

Security deposits issued by MHSD to recipients of income, hardship, or disability assistance must be repaid. The applicant will be required to:

- show that the deposit is necessary to obtain rental accommodation; and
- enter a written agreement to repay.

After April 1, 2002, recipients are limited to two outstanding security deposits. The only exceptions to this rule are persons fleeing domestic violence or persons forced to move because of the sale or demolition of their residence. As well, deposits will be recovered from assistance cheques at the minimum rate of \$20 per month. Security deposit deductions take priority over any other type of deduction. Security deposits obtained prior to April 1, 2002 do not count towards the limit of eligible deposits.

See EAR s. 58 and EAPWDR s. 56.

Also, see **Section V.J: Situations That May Affect Benefits: Overpayments, Repayments, and Assignments**, for a discussion of how the Ministry may pay the security deposit directly to the landlord by way of assignment.

### **1. Cooperative Housing Membership Shares**

To enable the family unit of a recipient of income assistance to obtain residential accommodation, the Minister may provide a lump sum to the family unit for the purchase of membership shares in cooperative housing. This supplement may be paid only if the family unit has received income or disability assistance for at least three months and the recipient agrees in writing to repay the lump sum. The amount of the supplement is limited to the lesser of either \$850 or 50 percent of the cost of the membership shares.

See EAR s. 43 and EAPWDR s. 43.

## ***J. Comforts Allowance***

The Minister may authorize payment of a comforts allowance up to a maximum of \$95 per month for a recipient who is receiving accommodation and care in:

- an emergency shelter or transition house, and for each person in the family (EAR, Schedule A, s. 9); or
- in a special care facility, including:
  1. hospitals for extended, intermediate and acute care,
  2. mental hospitals; and
  3. residential facilities for people with mental and/or physical disabilities (EAR Schedule A s. 8; EAPWDR Schedule A s. 8).

## ***K. Identification Replacement***

It is possible that MHSD will pay to have lost or stolen ID replaced.

## ***L. Children***

### **1. Child Benefits Cheque**

A Child Benefits Cheque is defined in the EAR and EAPWDR as a cheque issued in an amount consisting of the sum of any combination of:

- the B.C. Basic Family Bonus;
- the B.C. Earned Income Benefit;
- the Canada Child Tax Benefit; or
- the National Child Benefit Supplement.

The B.C. Family Bonus Program is administered by the Ministry of Small Business and Revenues for B.C.; it includes the Basic Family Bonus and the Earned Income Benefit. Benefits are combined with the Canada Child Tax Benefit and delivered via a single monthly cheque. The Program is designed to low-income families with the cost of raising children under 18 years old. Refer to this Ministry of Revenue website for more information: [www.sbr.gov.bc.ca/individual](http://www.sbr.gov.bc.ca/individual).

Eligibility and rates are based on net income calculated from the previous year's income tax assessment. Families with a net income of less than \$20,500 in the previous tax year should receive \$125.92 for the first dependent child, \$119.82 for the second, and \$121.83 for each additional child. If the family receives less than \$125.92, the Ministry will automatically generate a top-up benefit to make up the difference.

A temporary top-up benefit may be issued if the family has more children than were declared to the Canada Tax Benefit program, if the parents are not on the Canada Customs and Revenue Agency (CCRA) interface file (i.e. if they were not residents or did not include dependent children on their tax return), or while they are waiting for confirmation or issuance of the family bonus. The top-up will not be granted if there are no dependent children on file or if the family refuses to file a tax return or submit required notification to the CCRA.

### **2. School Start-Up**

A supplement may be issued to recipients of income or disability assistance under EAR s. 50 and EAPWDR s. 45. One allowance for each child attending school full time is issued each fiscal year to the child's parents or relative with whom he or she resides, as part of the August income assistance cheque. The amount is to assist with extra costs associated with a dependent child's schooling. The conditions of eligibility and the rates are discretionary; currently the rates are \$42 for children aged 5 to 11 and \$58 for children over 12 years old.

### **3. Camp Fees**

Dependent children of all recipients and adult recipients of disability assistance may have camp fees covered once a year up to the actual cost of the camp fee.

***M. Christmas Supplement***

EAR s. 49 and EAPWDR s. 44 allow the Minister to provide recipients of assistance with a Christmas supplement to help with extra expenses during the holiday season. It is not available to transients or to children in the home of relatives.

The rates are discretionary and are currently:

- \$35 for a single person with no dependants;
- \$70 for a couple with no dependent children; or
- \$70 for a family with dependent children, plus \$10 for each dependent child in the family unit.

***N. Guide Animal***

The EAR s. 62 and EAPWDR s. 60 both authorize the Minister to provide a family unit that is eligible for income, hardship, or disability assistance an additional benefit of \$95 per month to maintain a certified guide animal that is used by a person in the family unit.

**IX. HEALTH SUPPLEMENTS**

Schedule C of the EAR and EAPWDR both set out general and emergency health and dental services, including optical and orthodontic services. Applicants for both Enhanced and Basic medical benefits must:

- have the legal right to reside in Canada;
- make their home in B.C.;
- have resided for three continuous months in B.C.; and
- be physically present in B.C. for six months per calendar year.

Children of low-income families who receive any level of Medical Services Plan (MSP) assistance may also be eligible for basic dental and vision care, whether or not the family is receiving income assistance. It should also be noted that PWD retain their health assistance coverage indefinitely even if they have left income assistance for certain reasons, generally to pursue employment.

***A. Basic Medical Benefits***

**1. Medical Service Plan**

Recipients of income or disability assistance or PPMB benefits qualify for medical benefits such as those available under the Medical Services Plan of B.C. (MSP). EAR s. 67(1) and EAPWDR s. 62(1) set out who may qualify for general health benefits. Schedule C, s. 2 of each Regulation has important qualifiers. They also state the kinds of services available.

EAR s. 67(1) states:

The Minister may provide any health supplement set out in ss. 2 or 3 of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who is:

- (a) a recipient of income assistance under ss. 2, 4, 6 or 9 of EAR Schedule A if:

- (i) any person in the family unit is a person who has persistent multiple barriers to employment;
  - (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits; and
  - (iii) Repealed;
- (b) a person who receives assistance under EAR Schedule A, s. 8;
  - (c) a dependant of a person referred to in:
    - (i) paragraph (b); or
    - (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person;
  - (d) a child in the home of a relative, if equivalent payment for the services is not available through the child's parents;
  - (e) a dependent child of a recipient of income assistance or hardship assistance; or
  - (f) a person who was a recipient of income assistance under ss. 2, 4, 6, 8, or 9 of Schedule A on the day he or she reached 65 years of age and was eligible for health supplements under s. 2 or 3 of Schedule C on that day.

**NOTE:** See also s. 67(2) - (4) for other restrictions on when the Minister will pay for the health benefits set out in s. 2 of Schedule C.

## **2. PharmaCare**

People who receive medical benefits as outlined above will also get PharmaCare. PharmaCare is administered by the Ministry of Health to help with costs of prescription drugs and medical supplies. See the MHSD Policy Manual for details of the various plans.

Everyone on the B.C. Medical Services Plan should automatically receive a gold CareCard upon reaching 65 years of age. Anyone who does not receive one should ask a pharmacist for an application. He or she must have been continuously residing in B.C. for at least 90 days immediately prior to the request.

### ***B. Enhanced Medical Coverage***

The following people are eligible for enhanced medical:

- person with disabilities (PWD) designation and dependants;
- a single person meeting the criteria of a Person with Persistent Multiple Barriers (PPMB);
- a person meeting the criteria of PPMB whose spouse meets the same criteria;
- dependent children of all recipients of income assistance;
- a person with enhanced coverage without PWD designation, who, at the time of turning 65, was in receipt of assistance and maintains B.C. residency;

- a person under 65 with PWD designation, who is no longer eligible for disability assistance because of the employment income, federal pension, or other payment earned by either the person or the person's spouse and who maintains B.C. residency;
- a person with PWD designation who has turned 65 and his or her dependants, as long as the person with the PWD designation resides in B.C.;
- recipients or their dependants who are in special care facilities; and
- a child in the home of a relative (CIHR), only if equivalent payment for services is not available through the child's parents.

## **1. Medical Equipment and Devices**

Medical equipment and devices may be covered but these include only:

- a) wheelchairs, walkers, personal motorized mobility devices, canes, and crutches;
- b) orthotics and bracing;
- c) hearing aids;
- d) positioning devices; and
- e) breathing devices

that are medically necessary for basic mobility.

## **2. Disposable Medical and Surgical Supplies**

Certain medical supplies will be provided if they are necessary to prevent the recipient from becoming very ill (to avoid what MHSD calls "an imminent and substantial danger" to your health) and they are prescribed by a doctor.

## **3. Alternative Medicine Services**

Up to 12 visits per calendar year are payable by the minister for any combination of physiotherapy services, chiropractic services, massage therapy services, non-surgical podiatry services, naturopathy services and acupuncture services for which a medical practitioner or nurse practitioner has confirmed an acute need (Schedule C, s. 2).

## **4. Transportation**

The costs for the least expensive mode of transportation to and from the office of a local medical practitioner, nurse practitioner, specialist, general hospital, rehabilitation hospital are covered provided that

- a) the transportation is to enable the person to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act; and
- b) there are no resources available to the person's family unit to cover the cost (EAR, Schedule C, s. 3).

## 5. Nutritional Supplement

### a) *Monthly Nutritional Supplement*

This supplement is available only to PWD recipients who face “imminent danger” from a nutrition-related problem. The benefit ranges up to \$165 per month to supplement diet, \$20 per month for bottled water (for those suffering from moderate to severe immune suppression), and \$40 per month for vitamins.

### b) *Short-Term Nutrition Supplement*

This is available for PWD or PPMB recipients for three months for temporary nutritional needs.

### c) *Diet and Natal Allowances*

Under EAR ss. 74 and 75 and EAPWDR ss. 66 and 68, recipients of income or disability assistance and their dependants may receive an amount ranging from \$15 to \$50 (depending on the condition) if they require a special diet for a specific medical condition described in Schedule C, s. 8 and a medical practitioner, registered dietician or nutritionist confirms the need for the special diet in writing.

On written confirmation by a medical practitioner or a registered midwife that a recipient or dependant is pregnant, she is eligible for a natal benefit under Schedule C. She is also eligible if she has a dependent child less than seven months of age. Schedule C in each of the regulations allows \$45 per month from the time pregnancy is confirmed until the seventh month after birth. If the recipient produces written confirmation that she will give birth to more than one child, the amount is increased to \$90 per month.

There is no need for the recipient to prove that she cannot afford the special diet from her usual allowance or other resources.

## 6. Dental Supplements

### a) *Emergency Dental Supplements*

All recipients of income, hardship, disability and PPMB assistance receive emergency dental care for “immediate relief of pain”.

### b) *Basic Dental Supplements*

Section 68 of the EAR states that the Minister may pay for the provision of a dental or denture benefit to the following persons only if the applicable qualifying period is met:

- (a) a person referred to in s. 67(1)(a), (d) or (f) – see above **Section IX.A.1: Medical Services Plan**;
- (b) a dependent child of a recipient of income assistance;
- (c) a person referred to in s. 67(1)(b) if the person, or an adult dependent of the person, is a person who has persistent multiple barriers to employment;

- (d) an adult dependant of a person referred in s. 67(1)(b) if the adult dependant is a person who has persistent multiple barriers to employment; or
- (e) an adult dependant of a person referred to in s. 67(1)(f).

Recipients with the PWD designation and their spouses, as well as recipients who qualify as PPMB, receive \$1000 for dental work every two years. Dependent children of income and disability assistance recipients, and children in the home of a relative, receive \$700 of dental work every year.

PWD and PPMB may be considered for crown and bridgework (EAR s. 68.1 and EAPWDR s. 63.1).

**c) *Orthodontics***

Dependent children (including Children in the Home of a Relative) may be considered for orthodontic work (EAR s. 71 and EAPWDR s. 65).

**7. Eye Care**

All recipients (excluding income assistance recipients over 65 or under 19) have the cost of eyeglasses, repairs and coverage for basic eye examinations. Recipients are entitled to one exam every two years. Coverage for an optometrist's exam is up to \$44.83 and for an ophthalmologist up to \$48.90.

**X. APPEALS**

**A. *General***

An applicant or recipient has the right to request a review of any decision to deny, reduce, or discontinue assistance. Furthermore, applicants or recipients can request a review if the Ministry sets conditions in their employment plans that they disagree with. If the person is not satisfied with the outcome of a reconsideration or an administrative review, he or she may have the right to appeal that decision to the Employment and Assistance Appeal tribunal. Time limits are important: if any are missed, the right to appeal will be lost.

Applicants must complete ss. 3 and 4 of the "Request for Reconsideration" form and return it within 20 business days, along with relevant documents, to request a reconsideration of a Ministry decision. To appeal the reconsideration an applicant or recipient must submit a Notice of Appeal form within 7 days of being notified of the decision.

Section 17 of the EAA and s. 16 of the EAPWDA provide for basic rights to appeal and limit appeals by allowing the Lieutenant Governor in Council (the Cabinet of the provincial government) to designate by regulation categories of supplements that are not open to appeal and circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal. See EAR s. 81, and EAPWDA s. 73 for supplements that are not open to appeal.

**1. Reinstated Benefits Pending Appeal**

A recipient appealing a decision to discontinue income assistance may continue to receive the benefit while awaiting the outcome of the reconsideration if they agree to sign a repayment agreement. However, if the appellant does not succeed they may be forced to repay MHSD for the money he or she received. If this happens, the Ministry may agree to

accept repayments in small increments as low as \$10 per month. See EAA s. 28, EAR s. 89, EAPWDA s. 19, and EAPWDR s. 74.

## **B. Request for Reconsiderations or Appeals**

Section 17 of the EAA and s. 16 of the EAPWDA state:

- (1) A person may request the Minister to reconsider any of the following decisions made under this Act or the regulations:
  - (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
  - (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
  - (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
  - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of:
    - (i) the maximum amount of the supplement under the regulations; and
    - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
  - (e) a decision respecting the conditions of an employment plan.
- (2) The request must be made, and the decision reconsidered, in the time limits and in accordance with any rules specified by regulation.
- (3) Subject to a regulation under s-s. (5) and to ss. 9(7) (employment plan), 18 and 27(2) (overpayments), a person who is dissatisfied with the outcome of a request for a reconsideration under s-s. 1(a) to (d) may appeal the decision that is the outcome of the request to the tribunal.
- (4) A right to appeal given under s-s. (3) is subject to the time limits and other requirements set out in the EAA and the regulations.
- (5) The Lieutenant Governor in Council may designate by regulation:
  - (a) categories of supplements that are not appealable to the tribunal; and
  - (b) circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal.

### **1. Not Open to Appeal**

Section 81 of the EAR and s. 73 of the EAPWDR set out what is not open to appeal to the Employment and Assistance tribunal or beyond that, the Appeal Board.

The following categories of supplements are not open to appeal:

- (a) [Repealed];
- (b) reconsideration and appeal supplements under s. 54;

- (c) supplements related to employment plans under s. 56;
- (d) access to a program established or funded under the EAA or EAPWD; and
- (e) confirmed job supplements under s. 56.1.

Also, a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal if the person who would bring the appeal is awaiting a reconsideration of the Minister or decision of a panel on an earlier request for reconsideration he or she made, or an appeal he or she brought, respecting the same matter.

**NOTE:** If a client would like a review of a decision that is not open to appeal/reconsideration they may request an internal administrative review – i.e. the client may register their complaint with the supervisor at a local Employment and Assistance Centre. This may be particularly useful for service quality issues of disagreements about administrative procedures (e.g. where the client would like to request a different EA worker be assigned to the case). This is entirely separate from the appeal process.

## **C. Commonly Appealed Decisions**

### **1. Denial of PWD**

Where the applicant is told that he or she does not qualify under some element of the definition of “person with disabilities”, the applicant may request a reconsideration under s. 16 of the EAPWDA. If the decision is confirmed after the reconsideration, the applicant may appeal that decision to the Employment and Assistance Appeal Tribunal. The advocate should obtain authorization from the client to have copies of the MHSD worker’s report and/or any physician’s report released. Copies should be made for the tribunal members.

**NOTE:** While the appeal is in progress or if it is denied, other supplements, such as the dietary supplement, may be available to the client.

### **2. Relationships of Dependency/Roommates**

The definitions of “spouse” and “dependant” in the EAA are so broad that people are often denied or cut off from assistance because they are cohabiting, even though they are financially independent and not married. The law applies to different and same-sex couples equally.

If someone shares income or assets or any necessities of life obtained by income or assets, or indicates a parental responsibility for the other’s child, the regulations define them as a “dependant”. The application seems to depend on the level of intimacy that exists between those who share a dwelling. See **Section V.K: Living With One or More Persons**.

The second type of situation for which the Ministry may find a “marriage-like relationship” is where two individuals share a house or apartment. This is a common situation in urban areas, where market rents are often too high to allow low-income persons to afford separate dwellings. Sworn statements showing that they sleep separately and don’t share food, chores, or parental responsibilities, etc. will be required of both the person appealing and the other party. Be sure to cover each point mentioned in the regulations under the definitions of “dependant” and “spouse”. “Marriage-like relationship” is not defined in the legislation.

If the individuals share food and household chores, these activities may be justified as:

- “room and board” for which receipts are given;

- cost-sharing on a pre-set contractual basis (e.g. 50/50); or
- the only sensible thing to do in a dwelling with only one fridge, stove, or food cupboard where friends live and do not wish to take advantage of each other.

Childcare exchanges do not necessarily mean the caregiver has assumed “parental responsibilities” for a child. One might argue that although a caregiver has the same fiduciary obligations as a parent towards the child, in the first case the obligation arises out of a financial agreement for money or service in kind, or simply out of necessity arising from an immediate situation; whereas an “indication of parental responsibility” implies a long-term, voluntary commitment to the child’s welfare and should not be imposed or inferred simply for the purpose of short-term income assistance administration. Another argument might be that for reasonable consistency between provincial laws, there should be at least a comparable level of parental commitment to that of “parent” as defined in s. 1 of the Family Relations Act, R.S.B.C. 1996, c. 128.

### 3. Overpayments

There are two issues that must be considered when dealing with a claim by the Ministry for overpayment. You must ask:

- whether there actually was an overpayment; and
- what should be done about it.

The Ministry will push recipients of income assistance to sign an acknowledgement of the overpayment. If the client has not already signed the acknowledgement then he or she should be advised not to do so until he or she fully understands and accepts what he or she is signing.

In *Newfoundland (Social Assistance Appeal Board) v. Butler*, [1996] N.J. No. 91, the court held that the Ministry could not recover the monies paid out to Ms. Butler by mistake. Ms. Butler successfully used the defence of change of circumstance. The court held that because Ms. Butler had made expenditures that she would not otherwise have made without the overpayment, it would be unjust to force her to pay the Ministry back. Therefore, it may be that in similar situations, recipients of overpayments will not be obligated to repay social assistance for monies paid under a mistake of fact. Please note that in this case, Ms. Butler reported the income to the Ministry and the Ministry erred in not deducting it.

There are several things to consider when deciding whether or not to sign an acknowledgment. For example, if the person is still on income assistance it may be preferable not to sign, as this may trigger disqualification. However, if a recipient doesn’t sign an acknowledgment, it may lead to criminal charges. The Ministry will consider the complexity of the fraud and the amount of money at issue when deciding whether or not to lay charges. Typically, the Ministry will not pursue amounts under \$1,000.

It is important to note that the Ministry has other options available to them when an acknowledgment is not signed. Often the Ministry can reduce assistance without obtaining an acknowledgment. In addition, they can sue a recipient in civil proceedings.

In many situations, it is advisable not to sign an acknowledgment. However, if your client does choose to sign an acknowledgment and repay the overpayment, repayment schedules can be negotiated for as low as \$10 each month. The Ministry is not presently charging interest on repayments.

## ***D. The LSLAP Student Representative***

If a person has been charged with fraud, refer him or her to Legal Aid to apply for a criminal lawyer.

- If the person has just received a decision but has not appealed it, advise him or her to obtain a “Request for Reconsideration” form from the MHSD office and to complete and return it to his or her local Employment Centre **immediately**. If 20 business days have elapsed since the decision, it may be too late. If the applicant has already received a decision from a request to reconsider, and the matter is appealable (check EAR s. 81), advise him or her to complete a Notice of Appeal form and to return it within seven business days. LSLAP students should read Part 6 of the EAR carefully to offer advice on the appeal process.
- Help your client find an advocate (see **Section I.B.2: Policy Guidelines and Resources**, above, for organizations). If you agree to represent an appellant, ask him or her to fill out an “Authorization for Advocate and Confidentiality” form. This is a waiver that authorizes you to examine the client’s MHSD file.
- Read and fully understand the relevant section of the EAA or the EAPWDA **and** the regulation attached to the act.
- With the law as set out by the Act and regulation in mind, obtain the particulars of your client’s case. At the hearing, you will be regarded as the authority on your client’s situation. The Ministry may call witnesses such as the verification officer to give evidence. It is vital to have a clear, comprehensive account of the facts as your client understands them, and as they appear in the Ministry’s disclosure documents.
- If you submit additional documentation as evidence, such as medical reports, affidavits, or receipts, make enough copies for the Ministry and the tribunal members. Because there is no registry for administrative support for the tribunal system, advocates must assume responsibility for seeing that all documentation is marked (i.e. “Exhibit A, B, C,” etc.), with copies distributed to all tribunal members and the Ministry. Normally, you will only be able to use evidence that was submitted with the Request for Reconsideration form.
- The members of the tribunal are interested in what your client has to say. If your client is not articulate, the members will soon turn to you for the facts. It is best to wait for them to do so. If your client is reasonably articulate, you should merely state any facts he or she may have missed once the testimony is complete. When the facts have all been presented, provide a brief summation for the tribunal stating how the facts relate the relevant Act and its regulation.
- It is best to have a written statement of your presentation of the facts in case there is a judicial review.

## ***E. Time Limits and Process***

Time limits are crucial to obtaining an appeal. Applicants must file the reconsideration request at the Employment and Assistance Centre within **20 business days** of being informed of the decision. If the reconsideration results in an unsatisfactory decision, the client has **7 business days** to file a Notice of Appeal to the Employment and Assistance Appeal Tribunal.

### **1. Request for Reconsideration**

The client must request a “Request for Reconsideration” form from his or her Employment and Assistance worker. Make sure the request form correctly states the date the original decision was disclosed. The client should also request all documents and information on which the Ministry decision was based.

The form must be mailed or delivered to the Employment and Assistance Centre within **20 business days** (EAR, s. 79(2)). All submissions and other documents that may be relevant must be attached to the request form. The appeal to the tribunal is based on the record of the reconsideration. Therefore, it is best to put the evidence in at the reconsideration stage (EAA, s. 22(4)). It may be possible to amend some of the evidence when you proceed to the tribunal (e.g. you may be able to supplement a detailed doctor's report for a previously submitted vague report).

The Ministry must respond to the request form within 10 business days of receiving it, although this may be extended to 20 business days in some circumstances, if the Minister considers it necessary and the applicant consents (EAR, s. 80). Applicants asking for a reconsideration because they have been discontinued from benefits can apply for hardship assistance until the reconsideration is dealt with. If the reconsideration confirms the original decision, money received during the appeal process may be treated as an overpayment that must be repaid.

**NOTE:** Be aware of the 20-day limit. It may be useful to plan to deliver the request form at the end of the 20 days. You can use the interim to negotiate with the Employment and Assistance worker and ensure that all the necessary documents are gathered.

## 2. Appeals to Employment and Assistance Appeal Tribunal

If a client is unhappy with the reconsideration decision he or she may be able to appeal that decision to the Employment and Assistance Appeal tribunal. In order to appeal a "Notice of Appeal to the Employment and Assistance Appeal Tribunal Form" must be filed within **7 business days** of receiving the reconsideration decision. The notice of Appeal may be mailed directly to the Appeal Tribunal office or delivered to the local Ministry office. If the decision is not open to appeal, it may be possible to receive an internal administrative review (for more information; see **Section X.B.1: Not Open to Appeal**, above).

On the Notice of Appeal form the applicant should indicate if he or she wishes the appeal to be heard in person, in writing or by teleconference. There are advantages and disadvantages for each medium; students and clients will have to determine what is the best medium for their particular situation.

The Chairperson of the tribunal panel must give everyone involved in the hearing a minimum of two days' notice. If more notice is required attach a letter to the appeal notice explaining why more notice is required. The hearing must be held within 15 business days of delivery of the appeal notice. The hearing can be postponed if both parties and the chairperson agree to a later date (EAR, s. 85).

If there is not enough notice given for the tribunal hearing you should contact the Employment and Assistance office to ask for an adjournment. If the Ministry agrees to the adjournment the "Adjournment Request Form" must be filed. This form can be obtained from the tribunal office. If the other parties do not agree to an adjournment you can present arguments supporting your request at the beginning of the tribunal hearing. If possible bring evidence supporting your request.

**NOTE:** If the client has submitted his or her application for reconsideration quickly or without the assistance of an advocate, it may not be worthwhile to appeal the decision. In most cases appellants will only be permitted to present the same information as was presented at the time of reconsideration. Therefore, it may be in the client's best interest to re-apply for the benefit if more information is required. However, there are dangers in proceeding this way as well; please see s. 18 of the EAA.

## ***F. Tribunal Hearings***

### **1. Hearing**

The hearing is not open to the public, and proceedings are confidential. The appeal tribunal consists of three panel members who qualify under s. 82 of the EAR. You should verify at the beginning of the hearing that all of the participants have the same written evidence. If you find that the MHSD package contains information that was not previously provided, it may be necessary to request a recess or an adjournment to address the new information.

The chairperson sets the date of the hearing and decides any procedural questions that may arise during the course of the procedure. Procedures must conform to the rules of natural justice, which include:

- all information made available to the tribunal must also be made available to both parties;
- each party must have an opportunity to question witnesses presented by the other party; and
- each party must have an opportunity to fully present all relevant information.

**NOTE:** Before attending a hearing both students and clients should refer to the Tribunals Practices and Procedures as well as the Tribunals Member Code of Conduct. Available online at, [www.gov.bc.ca/eaat/popt/practice\\_and\\_procedures.htm](http://www.gov.bc.ca/eaat/popt/practice_and_procedures.htm), and [www.gov.bc.ca/eaat/popt/mcoc\\_preparation\\_attendance.htm](http://www.gov.bc.ca/eaat/popt/mcoc_preparation_attendance.htm) respectively.

Section 24 of the EAA states that in order to confirm the decision being appealed, the panel must determine that the decision is reasonably supported by evidence, or that it is a reasonable application of the legislation to the circumstances of the person appealing the decision. Otherwise, the panel must rescind the decision. If the decision of the tribunal cannot be implemented without a further decision as to amount, the tribunal must refer the further decision back to the Minister.

Both the appellant and MHSD may be represented by counsel at appeals. LSLAP students may act in this capacity for clients. Students should concentrate on legal argument as to how the facts relate to the law and how the result sought by the appellant is authorized under the appropriate act or regulation. It is rare for the Ministry to be represented by legal counsel, but it will do so if the appellant is represented by a lawyer.

At the hearing, the Ministry will refer to MHSD policy for guidance in interpreting the acts or regulations. It may be necessary to remind the tribunal that their policy manual is not the law, even though it may be considered for interpretative guidance. Rather than relying on legal arguments and case law, it may be preferable to give the appeal tribunal as much evidence as possible and reinforce its relevance. Remember, you can only refer to the evidence submitted for the reconsideration process or evidence submitted by the Ministry. The tribunal is not bound by legal or technical rules of evidence, except the rules respecting privileged communications.

To help make the tribunal's decision "judicial review-proof", if it is in the client's favour to do so, students may provide the members with a clear statement of the legal authority from which they can allow the appeal, accompanied by a statement of facts showing that the client's case meets the requirements of the legislation.

**Charter arguments:** Section 19.1 of the EAA states that s.44 of the Administrative Tribunals Act [ATA] is in force, meaning that the tribunal does not have jurisdiction over constitutional (Charter) questions.

**Human rights arguments:** Furthermore, the Tribunal has no jurisdiction to apply the Human Rights Code (see s. 46.3 of the ATA and s. 19.1 of the EAA).

## 2. Decision

The majority of the members of the tribunal determine the decision. It must be delivered in writing and usually must be delivered within five days of the hearing. The parties are deemed to receive notice of the decision when they receive it in the proper form. The decision must specify the decision under appeal, summarize the issues and the relevant facts considered in the appeal, set out reasons on which the panel based its determination, and specify the outcome of the appeal (EAR, s. 87(1)).

If the client wishes to pursue the matter further, LSLAP students may provide summary advice only with respect to judicial review procedure. Judicial reviews must be commenced within 60 days of the final decision of the tribunal. Please refer to Judicial Review: A Layperson's Guide by David Mossop. See also **Chapter 20: Public Complaints** in this manual for more information about judicial review.