

CHAPTER TWENTY-ONE: WELFARE (INCOME ASSISTANCE) LAW

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CHAPTER TWENTY-ONE: WELFARE (INCOME ASSISTANCE) LAW

I. INTRODUCTION

This chapter gives a general overview of a very complex area of law governed by lengthy and detailed legislation. It is not designed to be used on its own. Users of this chapter should be sure in each case to refer to the applicable welfare legislation.

A. *What is welfare?*

Welfare is a basic form of income support provided by the state to those in need. In BC, the provincial government administers welfare via the Ministry of Social Development and Poverty Reduction (the Ministry; formerly the Ministry of Social Development and Social Innovation). **Welfare is a “payer of last resort”**, which means that in order to receive welfare, a person must demonstrate that they have exhausted all other forms of support. This chapter will use the term “welfare” to describe all forms of income support provided by the BC government under the province’s welfare legislation.

B. *Welfare policy*

While the government’s policy on welfare is not law, it is an important lens for understanding welfare law in BC. Ministry policy sets out the practical details of how welfare is to be administered. The Ministry’s welfare policies are contained in “**BC Employment and Assistance Policy and Procedure Manual**”, which is available at: <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual>. The Policy and Procedure Manual incorporates MSDPR policy with the rules set out in the welfare legislation. It is an extremely useful tool for researching welfare law and policy.

C. *Types of Welfare*

Under the current welfare legislation in BC, the following types of welfare benefits are available to those who qualify:

INCOME ASSISTANCE. This is a basic monthly support and shelter allowance provided under the Employment and Assistance Act [EAA]. This is the benefit most people get when they receive welfare.

On income assistance, a single person under age 65 currently receives \$710.00 per month to cover housing, utilities, food, transportation, clothing, and all other basic necessities.

DISABILITY ASSISTANCE. This is a slightly higher, but still modest, monthly support and shelter allowance provided under the Employment and Assistance for Persons with Disabilities Act [EAPWDA] to those who meet the definition of “person with disabilities” in s 2 of that Act.

On disability assistance, a single person under age 65 currently receives \$1133.42 per month to cover housing, utilities, food, clothing, and all other basic necessities (plus a bus pass or \$52 per month more if the person chooses not to have a bus pass – see below at page 32).

PPMB ASSISTANCE. This is a special form of income assistance for people who have “persistent multiple barriers” to employment according to the criteria set out in s 2 of the Employment and Assistance Regulation [EAR]. It is for people who have a medical condition that makes it difficult or impossible to look for work or to keep a job. Technically, it falls within the definition of “income assistance” but this chapter will refer to it as a distinct form of welfare benefits.

On PPMB assistance, a single person under age 65 currently receives **\$757.92 per month** to cover housing, utilities, food, transportation, clothing, and all other basic necessities.

HARDSHIP ASSISTANCE. This is a support and shelter allowance provided under s 5 of the EAA and s 6 of the EAPWDA to persons who are not otherwise eligible for income assistance, PPMB, or disability assistance (see also part 4 of the EAR and part 4 of the EAPWDR). Some (but not all) categories of hardship assistance are repayable, i.e. a person receiving hardship assistance may accrue a debt owing to the government. It is usually temporary assistance. People with the PPMB or PWD designation may also receive hardship assistance, if they are not otherwise eligible for PPMB or PWD benefits. Therefore, there are different rates of hardship assistance.

On regular hardship assistance, a single person under age 65 currently receives a maximum of **\$710.00 per month** to cover housing, utilities, food, transportation, clothing, and all other basic necessities.

On PPMB hardship assistance, a single person under age 65 currently receives **\$757.92 per month** to cover housing, utilities, food, transportation, clothing, and all other basic necessities.

On disability hardship assistance, a single person under age 65 currently receives **\$ 1,133.42 per month** to cover housing, utilities, food, clothing, and all other basic necessities (plus a bus pass, or \$52 per month more if the person chooses not to have a bus pass – see below at page 32),

HEALTH SUPPLEMENTS. Recipients of income assistance, PPMB, and disability assistance may qualify for various health supplements from the Ministry. See Part 5, division 5 of the EAR, and the EAPWDR. The Ministry has a useful table summarizing health supplements that may be available, at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables/health-supplements-and-programs-rate-table>

SUPPLEMENTS. These are other forms of assistance that may be provided on a case-by-case basis for specific purposes set out under the EAA and EAPWDA and their associated regulations. See especially Part 5 of the EAR, Part 5 of the EAPWDR, and Ministry website (<http://www2.gov.bc.ca/gov/content/family-social-supports/income-assistance/on-assistance/supplements>).

II. GOVERNING LEGISLATION AND RESOURCES

A. *Governing Legislation*

Welfare law in BC is governed by the following statutes and regulations, all of which are available at www.bclaws.ca:

Employment and Assistance Act, SBC 2002, c 40 [EAA];

Employment and Assistance Regulation, BC Reg 263/2002 [EAR];

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41 [EAPWDA]; and

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002 [EAPWDR].

Forms regulations under the EAA and EAPWDA create many of the forms that Ministry uses in administering welfare. See also the Child in the Home of a Relative Transition Regulation, BC Reg 48/2010.

B. Tips for Navigating Welfare Law Issues

Please keep in mind the following important points when dealing with a welfare law issue.

- **Be current.** The statutes and especially the regulations governing welfare in BC can change often. Therefore, it is very important to check the BC Laws website and confirm that one is dealing with the most current legislation.
- **Be comprehensive.** Be sure to read the relevant section of the appropriate act or regulation in its entirety and to scan the legislation for other relevant sections. The legislation is complex and often a number of provisions work together to govern a particular program or benefit.
- **Be alert to mandatory versus discretionary wording.** Welfare legislation contains a mix of mandatory provisions (requiring the government to do or provide something) and discretionary provisions (which permit, but do not require, the government to act in a particular way). Consider whether the legislative provisions relevant to the client's case are mandatory or discretionary.

C. Referrals*

*See **Chapter 22: Referrals** for additional referrals

Community Legal Assistance Society (CLAS): may advise on general welfare matters and help clients with judicial reviews.

300 – 1140 West Pender Street
Vancouver, BC V6E 4G1
www.clasbc.net

Telephone: (604) 685-3425
Fax: (604) 685-7611

Disability Alliance of BC: offers one-on-one assistance to individuals applying for benefits or appealing the denial of benefits. Particularly experienced in appeals about eligibility for the Persons with Disabilities ("PWD") designation from MSDPR, which is needed to qualify for welfare disability assistance.

204 – 456 West Broadway
Vancouver, BC V5Y 1R3
<http://disabilityalliancebc.org/>

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

- Has also created a library of useful help sheets about disability assistance from the Ministry, and guides to applications and appeals (<http://www.disabilityalliancebc.org/money.htm>)

First United Church: Serves the Downtown Eastside. Provides advocacy and assistance for welfare, housing, and other poverty law issues. Operates a drop-in intake clinic. Hours are posted on their website.

542 East Hastings Street
Vancouver, BC V6A 1P8
firstunited.ca/advocacy

Telephone: (604) 251 3323
Fax: (604) 251 2488

Kettle Friendship Society Advocacy Centre: Advocacy focused on welfare, debt, housing, and child protection problems for clients with mental health issues. Also has a weekly Pro Bono Legal Clinic (please call ahead if you wish to refer a client).

1725 Venables Street
Vancouver, BC V5L 2H3
www.thekettle.ca

Telephone: (604) 251-2801
Housing Division Telephone: (604) 251-5664
Fax: (604) 251-6354

Downtown Eastside Women's Centre: Focuses on providing legal and non-legal support and advocacy for women with mental health issues.

Drop-In Centre:
302 Columbia Street
Vancouver, BC V6A 4J1
www.dewc.ca

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

Emergency Shelter:
412 Cordova Street, Vancouver, BC

Telephone: (604) 681-8480

ATIRA Women's Resource Society: Focuses on providing support for abused women and women on the downtown eastside. Their legal advocate program can provide advice, advocacy, and support with appealing welfare issues, and other poverty law issues.

101 East Cordova Street,
Vancouver, BC V6A 4J1
www.atira.bc.ca

Telephone: (604) 331-1407 (105)
Email: legaladvocate@atira.bc.ca

AIDS Vancouver: Can provide case management services and possible short-term financial assistance to persons living with HIV/AIDS.

1101 Seymour Street
Suite 235, 2nd floor
Vancouver, BC V6B 0R1

Telephone: (604) 893-2201

Email: contact@aidsvancouver.org

<http://www.aidsvancouver.org/>

Povnet: Find an Advocate: Can be used to find other advocates and organizations that can help with welfare issues in all parts of BC.

<http://www.povnet.org/find-an-advocate>

D. Useful Publications by Outside Agencies

In addition to this LSLAP manual chapter, other useful publications include:

BC Disability Benefits Help Sheets. These 15 guides are published by Disability Alliance BC. They are available at <http://disabilityalliancebc.org/category/publications/help-sheets/> and cover many areas relating to applying for benefits and appealing decisions.

How to Apply for Welfare, Applying for Welfare Online and Welfare Benefits: plain language guides published by the Legal Services Society for welfare applicants are available at the following links.

How to Apply for Welfare: <https://lss.bc.ca/publications/pub.php?pub=491>

Applying for Welfare Online: <https://lss.bc.ca/publications/pub.php?pub=497>

Welfare Benefits: <https://lss.bc.ca/publications/pub.php?pub=499>

III. ELIGIBILITY

This section deals with eligibility for income assistance, PPMB assistance, and disability assistance, but not for hardship. Please see **Section V: Hardship** for information on eligibility for hardship assistance.

A. Application Process

Applicants for income assistance, PPMB assistance, and disability assistance must comply with the application process set out in s 4 of the EAR and s 4 of the EAPWDR, and are subject to the numerous eligibility requirements set out below.

Applications may be filed online, by telephone, or in person. For more detail, see the LSS publication *How to Apply for Welfare* (at <https://lss.bc.ca/publications/pub.php?pub=491>).

1. Online Application

Online applications can be filled out at myselfserv.gov.bc.ca. Applicants must create a *My Self Serve* account, which requires an email address, Social Insurance Number (SIN), and information about the applicant's spouse, including common law partners.

2. Phone Application

To make a phone application, applicants may call toll-free at **1-866-0800**. After the initial call, a ministry worker will call back within three business days to fill out the application form with the applicant. Five business days after the phone application, the applicant must go to the ministry office or Service BC Center to sign the application form.

3. In Person Application

An applicant can go to their local ministry office to start the application process in person.

If the applicant has access to a phone, a ministry worker will call within three business days to fill out the application form with the applicant. Five business days after the phone application, the applicant will need to go to the ministry office or Service BC Center in person to sign the form.

If the applicant does not have access to a phone the applicant may make an appointment to meet with a ministry worker in person. At the appointment the ministry worker will fill out the application form with the applicant.

B. Obligation to Provide Information to the Ministry

Ministry staff are empowered (by s 10 of the EAA and s 10 of the EAPWDA) to require welfare applicants and recipients to demonstrate their eligibility by providing relevant information. Ministry employees are also empowered to independently verify that information.

At the same time, welfare recipients are obliged to respond to enquiries by the Ministry, submit reports to the Ministry as requested, and alert the Ministry to any changes in their circumstances that may affect their eligibility (s 11 of EAA and s 11 of EAPWDA). Section 33(1) of the EAR provides that by the fifth day of each calendar month a recipient of income assistance or PPMB assistance must submit a report (in a prescribed form) giving relevant information about eligibility. Meanwhile, s 29 of the EAPWDR requires that those on disability assistance submit the form only when there is a change in their circumstances that may affect their eligibility for benefits (e.g. change in their assets, income, or family situation).

If an applicant fails to comply with the Ministry's requirements to provide accurate information on factors affecting eligibility, this may result in the suspension or reduction of benefits.

Note that a "trusted third party" must witness many Ministry forms. This can be a welfare worker (EAW) or other Ministry staff. If an applicant cannot get to a Ministry office in person, the Ministry may accept a signature from another government worker or a prescribed professional (doctor, nurse, nurse practitioner, social worker, psychologist, chiropractor, or physical/occupational therapist).

To be eligible for income assistance, PPMB assistance, or disability assistance, applicants must show that they meet the:

- **Asset** limits;
- **Income** limits;
- **Immigration status** requirements; and
- **Age** requirements.

To be eligible, applicants must also:

- Pursue all other forms of support;
- Assign any spousal support rights to the Ministry (effective May 1, 2015, the assignment of child support rights to the Ministry is voluntary).
- Have been financially independent for two years in the past (with some exceptions as discussed below);
- Complete a three or five-week work search (with some exceptions as discussed below); and
- Comply with employment-related obligations and an employment plan (with some exceptions, discussed below).

Those wishing to receive disability assistance or PPMB assistance must first show they qualify for PPMB or PWD status under the relevant sections of the legislation (s 2 of the EAA for PPMB status, and s 2 of the EAPWDA for PWD status).

The above eligibility criteria will be discussed briefly below. Certain applicants who do not meet the eligibility criteria for income assistance, PPMB assistance, or disability assistance may still be eligible for hardship assistance. See Part 4 of EAR and Part 4 of EAPWDR for details.

C. Asset Limits

In order to be eligible for income assistance, PPMB assistance, or disability assistance, applicants must exhaust their assets to below certain asset limits. As noted above, welfare is a “payer of last resort”. The EAR (ss 11-13) and the EAPWDR (ss 10-12) set out limits on which assets a person can possess and still remain eligible for income assistance, PPMB assistance, or disability assistance.

Asset limits vary depending on the size of the family unit receiving welfare and the type of welfare the family unit is receiving.

Read the EAR (ss 1 and 11-13) and the EAPWDR (ss 1 and 10-12) carefully to identify the asset criteria. Note in particular the definitions of “asset”, which is set out in s 1 of the EAR and EAPWDR.

The following table summarizes the asset limits for different family sizes applying for or receiving different forms of welfare. A more detailed table is available at: <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables/assets-rate-table>.

Applicant	Maximum Allowable Assets
Single person on income assistance or PPMB	\$2 000
Family (more than one person) on income assistance or PPMB	\$4 000
Family unit that includes one person on, or applying for, disability assistance (this includes single people)	\$100 000
Family unit that includes two people on, or applying for, disability assistance	\$200 000

1. Exempt Assets

Sections 11(1) of EAR and s 10(1) of EAPWDR should be reviewed in detail to see if any of a person’s particular assets are exempt, i.e. do not count toward their asset limit. Some key exempt assets are:

- **Clothing** and necessary household equipment
- **One vehicle** per household and only if used for day-to-day transportation needs

- A person who is applying for or receiving disability assistance can have a vehicle with any amount of equity in it as an exempt asset.
- A person who is applying for or receiving income assistance or PPMB assistance can have a vehicle with up to \$10 000 equity in it as an exempt asset. This limit does not apply where the vehicle has been significantly adapted to accommodate the disability of a recipient, or where the vehicle is used to transport a disabled child in the care of a recipient.
- **A family unit's place of residence**
- **A child tax benefit** or GST credit under the Income Tax Act (Canada)
- **A BC early childhood tax benefit**
- **A sales tax credit** under the Income Tax Act (British Columbia)
- **A registered disability savings plan** or “RDSP” (see <http://www.rdsp.com/> for more information)
- **An uncashed life insurance policy** with a cash surrender value of \$1 500 or less
- **Business tools**

Section 12 of the EAR and s 11 of the EAPWDR provide that the Ministry may approve savings accounts for the purpose of “future self-sufficiency”, and that these accounts will be exempt assets.

2. Disability Trusts are Exempt Assets

Under s 13 of the EAR and s 12 of the EAPWDR, assets of up to \$200 000 can be held in a non-discretionary trust for a person with PWD status (or an applicant for PWD status, or for another individual with disabilities in certain circumstances) without disqualifying the person from income assistance or disability assistance. In certain circumstances, the Ministry can authorize a non-discretionary trust to hold more than \$200 000. There is no limit on the amount that may be held in a discretionary trust.

D. Income Limits

In order to be eligible for income assistance, PPMB assistance, or disability assistance, applicants must exhaust all other sources of income to support themselves and their dependents, except for income specifically exempted by legislation or policy.

The net income limits for welfare recipients are set out in s 10 of the EAR and s 9 of the EAPWDR. Schedule B in both regulations sets out the manner in which a person’s net income is calculated for the purpose of welfare eligibility.

1. Types of Income Relevant to Income Limits

The Ministry distinguishes between earned and unearned income for the purpose of the net income calculation.

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

- Any money or value received in exchange for work or the provision of a service
- Pension plan contributions that are refunded because of insufficient contribution to create a pension

- Money or value received from providing room and board at a person's place of residence
- Money or value received from renting rooms that are common to and part of a person's place of residence

UNEARNED INCOME. EAR, s 1 and EAPWDR, s 1 define "unearned income" as any income that is not earned income. They give a non-exhaustive list of examples including:

- Any type of CPP benefits
- WCB benefits and other disability payments and pensions
- Inheritances
- Rental income from land or property
- Education or training allowances, grants, loans, bursaries, and scholarships
- Winnings from lotteries and other forms of gambling
- Criminal injury compensation or crime victim compensation
- "Any other financial awards or compensation"
- Money received as
- Funds received from a sponsor under a sponsorship agreement pursuant to the *Immigration and Refugee Protection Act*

2. ***Deductions and Exemptions from Income***

Earned and unearned income is deducted dollar-for-dollar from a recipient's monthly cheque, subject to a list of deductions and exemptions set out in ss 1-9 of Schedule B of EAR and in ss 1-9 of Schedule B of EAPWDR. **These sections should be carefully reviewed to determine if the applicant's income is exempt or subject to deductions.**

Money withdrawn from a disability trust for certain purposes is also exempt as income. See s 13 of the EAR, and s 12 of the EAPWDR. Also see s 7(1)(d) of Schedule B to the EAR and the EAPWDR.

Money from structured settlement annuity payments that is used for certain purposes is also exempt as income. See Schedule B, s 7 of the EAR and EAPWDR for details.

The following are **some** examples of income exempted by Schedule B of the EAR and EAPWDR. This list is far from exhaustive. Note that an applicant or recipient of welfare benefits **must** report their receipt of all income to the Ministry, even if it is exempt.

- Income tax refunds;
- Universal child care benefits;
- Canada child benefits;
- Withdrawals from a Registered Disability Savings Plan;
- Child support payments (as of Sept 1, 2015; before Sept 1 2015, payments were considered unearned income and deducted dollar-for-dollar)
- CPP orphan's benefit (as of Sept 1, 2015)
- Gifts (including recurring gifts) and inheritances are exempted as income for recipients of **disability assistance** only (as of December 1, 2015). For people receiving income assistance and PPMB benefits, inheritances and recurring gifts are NOT exempt as income and a one-time gift is exempt only if it does not make the recipient exceed their asset exemption level;
- A refund from Fair Pharmacare; and

- Some portion of WCB Temporary Wage Loss Replacement Payments issued under ss 29 and 30 of the Workers Compensation Act, if:
 - At least one person in the family unit is has the PWD designation, and either
 - The family unit has received PWD benefits for at least one month or
 - The family unit has received PWD benefits in the past; and
- EI maternity and parental benefits, and EI benefits for caring for a critically ill child (as of October 1, 2016). Before October 1, 2016, such payments were considered unearned income and deducted dollar for dollar).

See ss 1-9 of Schedule B of the EAR and ss 1-9 of Schedule B of EAPWDR for a complete list of income exemptions.

3. *Earnings Exemptions*

Recipients of income assistance, PPMB assistance, and disability assistance all have an earnings exemption. The earnings exemption for income assistance and PPMB assistance is monthly; as of January 1, 2015, the earnings exemption for recipients of disability assistance is calculated per year (i.e. annual earnings exemption). The exemptions apply to all earned income, including wages from employment, money received from providing room, and board at a person's place of residence, or money received from renting rooms that are common to the person's place of residence.

For recipients of income assistance and PPMB assistance, there is a one month waiting period to claim any earnings exemption. This means that a family unit cannot claim an earnings exemption for the first month in which they become eligible for income assistance or PPMB assistance, but can claim an earnings exemption for any subsequent months.

For recipients of disability assistance, there is a one-month waiting period to claim an earnings exemption unless:

- A member of the family unit has received disability benefits at any point in the past OR
- A member of the family unit received income assistance or PPMB assistance in the month before the family unit became eligible for disability assistance.

Current earnings exemptions are as follows:

- Family units, without children, receiving income assistance: \$400/month.
- Family units receiving income assistance who have a dependent child or are caring for a supported child: \$600/month
 - **Exception:** a single parent of a dependent child or supported child who has a disability that prevents the parent from working more than 30 hours per week has an earnings exemption of \$700/month while receiving income assistance
- Family unit receiving PPMB assistance: \$700/month
- Family unit receiving disability assistance:
 - \$12, 000 per calendar year for a single adult (or single parent) with the PWD designation;
 - \$14, 400 per calendar year for with two adults where one adult has the PWD designation, and the other adult does not.
 - \$24, 000 per calendar year for families where two adults have the PWD designation.

If a child is under 19 and in school full-time, a family unit can still keep the entirety of that child's income without it affecting their benefits (although the child's income must still be reported to the Ministry). If a child is under 19 and not in school full time, then any income the child earns counts toward the family unit's earnings exemption. For more information on earnings exemptions, see EAPWDR schedule B, s 3, and EAR, schedule B, s 3.

NOTE: all earned income must be reported to the Ministry, even if it is below a person's earnings exemption.

E. Immigration Status Requirements

Under s 7 of the EAR and s 6 of the EAPWDR, at least one person in a family unit that is applying for or receiving income assistance, PPMB assistance, or disability assistance must be a:

- Canadian citizen;
- Permanent Resident;
- Convention refugee;
- Person on a Temporary Resident Permit;
- Refugee claimant;
- Person under a removal order that cannot be executed.

The only exception to these immigration status requirements is that some parents without immigration status who have been abused may be eligible for temporary assistance (see below).

Where an applicant for, or recipient of, income assistance, PPMB assistance, or disability assistance meets the immigration status requirements, but an adult dependant of the applicant does not, assistance and supplements may be issued for the other members of the person's family unit, but not for the adult dependant who does not meet the citizenship requirements. However, the assets and income of the person who does not meet the citizenship requirements will be included when determining the household's income and assets.

1. Single Parents Without Status Who Have Been Abused

A single parent who does not meet the requirements for citizenship, permanent residency, refugee status, or temporary residence might be eligible for welfare on a temporary basis if they have:

- a dependent child who is a Canadian citizen; AND
- left an abusive spouse; AND
- applied for status as a permanent resident; AND
- cannot leave BC because of ONE of the following:
- another person who lives in BC has parenting (also called custody and access) or contact (visitation) rights with at least one of the person's dependent children through a court order, agreement, or other arrangement, AND
- leaving BC with his or her children would go against the court order; OR
- another person who lives in BC is claiming parenting or contact rights regarding the child or children; OR
- The parent or child is being treated for a medical condition and leaving BC would be dangerous to that person's physical health.

For more information, see s 7.1 of the EAR, and s 6.1 of the EAPWDR.

NOTE: The parent should also be excused from the work search and the past financial independence requirements.

F. Age Requirements

Generally, a person must be 19 years of age in order to apply independently for welfare, but there are some circumstances where those under 19 may apply for welfare. See s 5 of EAR and s 5 of EAPWDR. Minors under 19 who do not live with their parents or guardians have the right to apply for income assistance from the Ministry. To qualify, the Ministry has to be convinced that their parents will not support them.

1. Income Assistance for Children and Youth

Minors under 19 who do not live with their parents or guardians have the right to apply for income assistance from the Ministry. Before granting assistance to such a minor, the Ministry must make reasonable efforts to have the minor's parents or guardians assume financial responsibility for the minor's support. If the parents or guardians are unwilling to support the minor, the Ministry may grant the minor income assistance.

The Ministry will refer minors under 17 who apply for income assistance to a social worker with the Ministry of Child and Family Development before assistance is provided. The Ministry will refer minors between 17 and 19 to a social worker only if it considers there to be child protection issues.

Note that as of 1 April 2010, the Ministry will no longer pay Child in the Home of a Relative benefits to new applicants.

2. Disability Assistance for youth 18 and over

Disabled youths may be eligible for the PWD designation and disability assistance at the age of 18, even if they live with their parents. To qualify, a youth must have a severe mental or physical impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. Additionally, this impairment must directly and significantly restrict the person's ability to perform daily living activities either continuously or periodically for extended periods, in the opinion of a health professional. Finally, as a result of those restrictions, the person must require help to perform those activities (see s 2(2) of the EAPWDA). An application for PWD benefits can be started 6 months before the youth's 18th birthday.

3. Welfare for Teenaged Parents Living at Home

If a child is under 19, has a dependent child, and lives with his or her own parent who is also on income assistance, PPMB assistance, or disability assistance, the Ministry may consider the two sets of parents as separate family units. This means that both the parent and grandparent may be entitled to a shelter allowance of their own in addition to a support allowance. The Ministry's decision will depend on the child's age. For more information, see s 5 of the EAR.

Other options:

4. MCFD Youth agreements for 16 to 18-year-old youths

Youths aged 16 to 18 years who have left home and do not have a parent or other persons willing to take responsibility for him or her, or who cannot return home for reasons of safety, may be eligible for a Youth Agreement with the Ministry of Child and Family Development (“MCFD”). A Youth Agreement assists at-risk youth to live independently, return to school, and gain work experience or life skills. For more information on whether a person qualifies, contact the nearest MCFD office. Also see <http://www2.gov.bc.ca/gov/content/safety/public-safety/protecting-children/youth-agreements>.

5. MCFD Extended Family Program

If a young person under 19 lives with extended family members or close friends, the caregiver may be eligible for benefits to care for the young person under MCFD’s Extended Family Program. The child’s parent(s) must live elsewhere, must request these benefits from MCFD, and must agree with the placement. Extended Family Program benefits are usually temporary. A caregiver who is also the child’s legal guardian is not eligible for Extended Family Program benefits. For more information, see: <http://www2.gov.bc.ca/gov/content/family-social-supports/fostering/temporary-permanent-care-options/placement-with-a-person-other-than-the-parent>.

G. *Obligation to Pursue Other Support and Not Dispose of Property*

Applicants are eligible for all forms of welfare 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.

Applicants may become ineligible for assistance if they “dispose of property” for consideration that the Ministry thinks is inadequate. This means that a person cannot, for example, give away a valuable asset and in order to become eligible for welfare. For details, see EAA, ss 13-14; EAR, ss 29 and 31; EAPWDA, ss12-13; and EAPWDR, ss 25 and 27.

If an applicant or his or her dependants fail to take advantage of other resources that they might use to support themselves, or if they dispose of assets for inadequate consideration, the Ministry may reduce the amount of assistance granted to the family unit or declare the family unit ineligible for a period set by the regulations (see EAR, ss 29 and 31; EAPWDR, ss 25 and 27). Some ineligible persons may be considered for hardship benefits if they agree to repay the amount they receive.

1. *No Obligation to Assign Child or Spousal Support Rights*

Until May 1, 2015, applicants for and recipients of welfare were required to assign to the Ministry any rights they had to pursue or respond to legal proceedings involving maintenance for their dependent children (i.e. child support) and for themselves (i.e. spousal support). That requirement has been repealed. Currently, a person applying for or receiving welfare has the choice whether or not to assign their right to pursue child or spousal support to the Ministry. See section 20 of the EAR and section 17 of the EAPWDR.

a) *Child support not considered income:*

As of September 1, 2015, the Ministry no longer considers child support payments received to be unearned income, and child support will not be deducted from welfare cheques.

If a client wants the Ministry to provide them with legal help in pursuing an order or agreement for child support (or possibly varying an old Court order or agreement), the client can contact the Ministry and ask to voluntarily assign their child support rights to the Ministry. The guidelines the ministry will apply in deciding whether to accept a voluntary assignment of child support rights are at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcca-policy-and-procedure-manual/general-supplements-and-programs/family-maintenance-services>

If a client already has a child support order or agreement enrolled for enforcement with the Family Maintenance Enforcement Program (FMEP) as of May 1, 2015, the client can now choose to either:

- a) continue to have the order enforced, or;
- b) withdraw the order from FMEP;

If a client decides to withdraw an order or agreement from registration with FMEP, the client can still try to enforce the order themselves through the court (i.e. collect on child support payments or arrears) procedures set out in the *Family Maintenance Enforcement Act*, RSBC 1996, c 127.

b) *Spousal Support still considered income*

While an applicant for or recipient of welfare is no longer legally required to assign their right to pursue spousal support to the Ministry, any spousal support received is still considered unearned income and will be deducted dollar-for-dollar from all welfare benefits. If the Ministry considers that a person has a right to spousal support, but the person does not pursue it (either independently or by assigning their spousal support right to the Ministry), the Ministry may reduce the amount of assistance granted to the person's family unit or declare the family unit ineligible for a period set by the regulations (see EAR, ss 29 and 31; EAPWDR, ss 25 and 27).

If an applicant for or recipient of welfare is interested in assigning their spousal support rights to the Ministry so they can get legal help obtaining a court order or agreement for spousal support, the client can contact the Ministry and ask to voluntarily assign their right to spousal support. Where that person's ex-partner is abusive toward them, it is important for the person to disclose this to the Ministry. Ministry policy provides discretion not to pursue spousal support under an assignment where doing so could put the applicant or recipient at risk. For more information, see the Ministry's risk assessment policy at: <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcca-policy-and-procedure-manual/general-supplements-and-programs/family-maintenance-services>

H. Two Years' Past Financial Independence Requirement

The EAA, s 8 and the EAR, s 18 state that in order to be eligible for income assistance, applicants must show that they have been financially independent for two consecutive years at some point in the past. This usually involves showing they have:

- Worked for 840 hours a year for two consecutive years:
- Earned at least \$7 000 a year for two consecutive years: OR
- Worked for part of a two-year period, and collected Employment Insurance or another income replacement (excluding income assistance or a training allowance) for the rest of the two-year period

The financial independence requirement does not apply to applicants for PPMB assistance or disability assistance. There are numerous other exemptions including, among other things (EAR, s 18(3) and (4)):

- People under 19
- Pregnant women
- People with dependent children
- People who have recently left an abusive relationship and this has affected their ability to work
- People who were supported by an employed spouse or supported by a combination of an employed spouse and other benefits for two years
- People whose medical condition prevented them from working for at least six of the last 24 months or will prevent them from working for the next 30 days
- People who have earned a two-year certificate or diploma, bachelor's degree, or post-graduate degree
- People who were in prison for at least 6 months of the past 2 years

The exemption also covers those who "were for any reason unable, due to circumstances beyond their control, to search for or accept employment, and will otherwise experience undue hardship".

I. Five-Week Work Search

All new applicants, including persons with disabilities, must go through the two-stage application process set out in ss 4, 4.1 and 4.2 of the EAR and ss 4, 4.1 and 4.2 of the EAPWDR. (See the Legal Services Society's "How to Apply for Welfare" information booklet for more information: <https://lss.bc.ca/publications/pub.php?pub=491>).

As of 1 October 2012, new applicants for assistance are required to do a 5-week work search (up from 3 weeks). Most returning applicants will be required to do a 3-week work search.

New applicants must (unless they are exempted as set out below) wait five weeks to apply for income assistance after completing stage 1 of the welfare application. During this five-week period they must attend an orientation session and complete a job search. Applicants can do the orientation session at a session organized by the Ministry, by phone or in person with Ministry staff. If someone starts their application for welfare online through <https://www.iaselfserve.gov.bc.ca/HomePage.aspx>, the orientation is built into the online application process.

An applicant who is required to do a job search must keep clear records to prove to the Ministry what they have done to look for work. The Ministry assesses the reasonableness of a job search on a case-by-case basis. Generally, a reasonable work search usually includes things like writing up a resume; looking for jobs on the Internet, by phone, and through personal contacts; submitting applications or resumés; going to job search workshops; going to employment agencies; asking for "job shadowing opportunities"; and going to job interviews.

Certain groups are exempt from the orientation and job search; see ss 4.1(4),(5), and (6) and s 4.2(5) of each Regulation (EAR and EAPWDR) for details.

NOTE: if a person can show that they have an immediate need for food, shelter, or urgent medical attention, they may qualify for (non-repayable) hardship assistance from the Ministry while they do their work search. A person in this situation should request an **"immediate needs assessment"** from the Ministry. The Ministry's service standard is that a person requesting immediate needs assessment should have their situation assessed by the Ministry through a stage 2 eligibility interview, within one business day. If the Ministry is not able to do that, the service standard provides the person's immediate need should be met (e.g. by vouchers for food, bus tickets, shelter referral etc.) until the eligibility interview is conducted. See the Ministry's policy on immediate needs assessments at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/application-and-intake/immediate-needs>

An applicant does not have to do a work search (either three or five weeks) if they:

- Are prohibited from working in Canada;
- Are age 65 or over;
- Have a physical or mental condition that precludes the person from completing a search for employment as directed by the minister;
- Are fleeing an abusive spouse or relative; OR
- Are the single parent of a child under three (this includes foster children and some children placed in their care by MCFD).

J. Ongoing Employment Obligations: Employment-related Obligations and Employment Plans

If the Ministry considers a recipient of welfare benefits to be employable, the person will have "employment-related obligations" under s 13 of the EAA and s 29 of the EAR. This means that they must actively look for work and accept any job offer that the Ministry considers "suitable" (appropriate). They must also not refuse suitable employment. For more information, see "Failure to meet employment-related obligations" under section III below.

Certain persons are exempted from having employment-related obligations; see EAR s 29(4) for details. For example, people with PPMB status or the PWD designation, single parents of children under 3, and people 65 and over do not have employment-related obligations. Recipients of assistance who have employment-related obligations must also have an Employment Plan (EP) under s 9 of the EAA. Even recipients with certain barriers to employment, such as drug and alcohol problems or other medical conditions, may be required to follow an EP. However, the EP is meant to be tailored to the abilities and skills of the recipient. EPs for recipients under the age of 19 focus on completing high school.

An EP outlines the conditions (activities and expectations) that the Ministry thinks a person 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 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.

People with the PPMB and PWD designation are not required to have an employment plan. The Ministry may encourage them to sign a “voluntary participation plan”, however this is not mandatory. Having a voluntary participation plan may however be required to get access to certain training programs.

The Ministry has established various programs for employment, self-employment, and volunteering by people on income assistance, PPMB assistance, and disability assistance. These programs are optional if the person does not have employment related obligations.

K. Single Parent Employment Initiative

Effective September 1, 2015, the Ministry introduced a “single parent employment initiative.” Under this initiative, if a single parent on income assistance, PPMB or disability assistance is assessed as needing training in order to gain employment in certain fields, they may be eligible for the Ministry to pay tuition for their training, and to continue receiving income or disability assistance for up to 12 months while participating in an approved training program. Single parents may be eligible for additional child care and transportation supports while participating in the training program or paid work experience program. Single parents that are eligible for the child care subsidy may also have access to additional child care supports during their training period and their first year of their employment.

For more details on this program, see the Ministry’s Policy and Procedures Manual under “Single Parent Employment Initiative” at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/education-and-training>

L. Persons with Disabilities (PWD)

To obtain disability assistance, a person must show that they qualify under s 2(2) of the EAPWDA definition of “person with disabilities” (“PWD”). This section defines a “person with disabilities” as a person over 18 with a severe mental or physical impairment that:

- a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least two years; and
- b) in the opinion of a prescribed professional (a doctor, psychologist, physical or occupational therapist, social worker, nurse, nurse practitioner, or chiropractor):
 - (i) directly and significantly restricts the person’s ability to perform daily living activities either
A. continuously; or

- B. periodically for extended periods; and
- (ii) as a result of those restrictions, the person requires help to perform those activities.

People who wish to receive disability assistance must complete an extensive application form with the assistance of a doctor and another medical professional and satisfy to the Ministry that they meet the above definition.

"Requiring help" includes:

- Help from an assistive device (like a wheelchair);
- Significant help from another person; OR
- Help from an assistance animal (such as a guide dog).

NOTE: In *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, the BC Supreme Court made several important findings about the eligibility criteria for persons with disabilities designation under the EAPWDA. For a helpful summary of the findings in Hudson, the Community Legal Assistance Society has published a summary online at: http://d3n8a8pro7vhmx.cloudfront.net/clastest/pages/79/attachments/original/1401252006/PWD_Eligibility_Summary_HUDSON.pdf?1401252006

1. *Simplified PWD Application for Certain Applicants*

As of September 1, 2016, certain applicants need only complete a simplified two-page form to qualify as a PWD for the purposes of s 2(2) of the EAPWDA. Under the EAPWDR s 2.1, an applicant must be one of the following to qualify for the simplified form:

- a) A person who is considered to be disabled under s 42 (2) of the Canadian Pension Plan (Canada) (that is, the person is receiving CPP disability benefits);
- b) A person enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, BC Reg. 73/2015;
- c) A person who has at any time been determined to be eligible for payments from the Ministry of Children and Family Development's "At Home Program";
- d) A person who has at any time been determined by Community Living British Columbia (CLBC) to be eligible to receive community living support under the Community Living Authority Act;
- e) A person whose family has at any time been determined by Community Living British Columbia (CLBC) to be eligible to receive community living support under the Community Living Authority Act.

M. *Persistent Multiple Barriers (PPMB)*

To obtain PPMB (Persons with Persistent Multiple Barriers to employment) assistance, a person must qualify under s 2 of the EAR, which involves the application of an "employability screen" designed to determine whether the person faces challenges in securing and maintaining employment. A person will have to prove to the Ministry that they have done everything reasonable to try and overcome their problems, but that the problems themselves made it impossible for them to do so.

A person can only qualify for PPMB benefits if they have already received income assistance or hardship assistance for at least 12 out of the last 15 months.

Disability Alliance BC has detailed help sheets for people applying for, or appealing, decisions about PPMB status, at <http://disabilityalliancebc.org/category/publications/help-sheets/>.

IV. SPECIAL SITUATIONS

A. *People Living on a First Nations Reserve*

People (whether aboriginal or non-aboriginal) living on a First Nations reserve must seek welfare benefits through the Band Social Development Program, administered by Aboriginal Affairs and Northern Development Canada.

For First Nations persons living off a reserve, the usual policies and procedures for qualifying for welfare through the Ministry apply. For more information, see the following Legal Services Society's publications:

Aboriginal Legal aid in BC website:

Income assistance on reserve section at <https://aboriginal.legalaid.bc.ca/benefits/socialAssistance.php>

Income Assistance on Reserve in BC (booklet):

<http://www.lss.bc.ca/publications/pub.php?pub=100>

B. *Transients and People Staying at Emergency Shelters and Transition Houses*

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

- Has no dependent children; AND
- Has no fixed address; AND
- 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 transient person is not eligible for an earnings exemption under the EAR, Schedule B, s 3(7), or for Health Supplements under Division 5 of the EAR.

A person or family staying in an emergency shelter or transition house 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; EAPWDR, Schedule A, s 8).

V. FACTORS THAT MAY AFFECT ELIGIBILITY

A. *Family Units, Dependency, and Spousal Relationships*

Under the welfare legislation, assistance is paid not to individuals, but rather to "family units". Family units are deemed under the legislation to include a welfare applicant or recipient, his or her "dependent children" and his or her "spouse." Note that "spouse" and "dependent child" are defined in the legislation.

If two or more people are considered to be part of the same family unit, their **combined** assets and monthly income will be used to determine their ongoing eligibility for assistance and their monthly benefit amount will be calculated as a lump sum for a family unit of that size.

See the definitions of “applicant”, “dependent”, “dependent child” “family unit”, and “recipient” in s 1 of the EAA and the definition of “spouse” in s 1.1. The same definitions exist in the corresponding sections of the EAPWDA.

A "family unit" includes a person who is applying for or getting welfare as well as that person's dependants. A "dependant" can be a spouse or partner living with the applicant and can also be a child.

NOTE: other relatives, such as parents or adult children, are not considered dependants, even if they live with and rely upon the applicant.

To be considered a "dependent child", a child must:

- Be under 19 years old (unless the child is 18 and getting PWD benefits);
- Rely on the applicant for food, shelter, and clothing; AND
- Live with the applicant for more than half of each month.

Married couples who have separated but continue to live separate and apart under the same roof may qualify for welfare as individuals (not spouses) under the Ministry’s policy about “determination of residing together” at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/support-and-shelter/family-composition?keyword=family&keyword=composition>

If roommates do not want to be considered a family unit, they must be able to show that they do not fit the definition of “spouse” in s 1.1 of the EAA and EAPWDA. In determining whether two people who live together fit the definition in s 1.1, the Ministry may look at common-sense indicia of a spousal relationship such as:

- 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 an ongoing sexual relationship with another person.

Cases where a disabled person lives with a roommate who helps with their disability caregiving needs can be tricky. Consider referring such cases to an organization such as Disability Alliance BC. Ministry policy provides that when it is assessing whether a disabled person is in a spousal relationship with a roommate, the Ministry must consider whether any interdependency in their relationship is attributable to the person’s disability caregiving needs (not a marriage like relationship) (see Ministry Procedures under “completing an assessment of a marriage-like dependency relationship” at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/support-and-shelter/family-composition?keyword=family&keyword=composition>)

B. Failure to Meet Employment-Related Obligations

Under EAA s 13, EAPWDA, s 12, EAR s 29 and EAPWDR s 25, the Ministry may reduce assistance (for households that include dependent children) or declare a household ineligible for a period set by regulation (for households with no dependent children) if a recipient or adult dependant who has employment-related obligations:

- 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 a past Ministry operational directive defined 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”.

“Just cause” for leaving employment is not defined in the legislation, but the Ministry Policy and Procedure Manual at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/sanctions> states that just cause for leaving employment 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; or
- h) Reasonable assurance of another job.

If the Ministry decides that the person was fired for just cause or quit a job without just cause, penalties may apply, including:

- If the person does not have dependent children, the Ministry may not allow the person to apply for income assistance or hardship assistance for two calendar months.
- If the person does have dependent children, the Ministry can allow them to apply for income assistance or hardship assistance, but the benefits will be reduced by \$100 for two months.

NOTE: The details of the sanctions that the Ministry may apply under EAA s 13, EAPWDA s 12, EAR s 29, and EAPWDR s 25 are summarized in the Ministry’s Policy and Procedures Manual in a table under “reasons for sanctions” at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/sanctions>

NOTE: The above employment-related sanctions do not apply to recipients listed in EAR s 29(4).

C. Failing to Accept or Pursue Income or Assets or Disposing of Property

Section 14 of the EAA (s 13 of the EAPWDA) and s 31 of the EAR (s 27 of the EAPWDR) outline the sanctions that the Ministry may apply to applicants who fail to pursue income or assets or who dispose of property for inadequate consideration.

NOTE: The details of the sanctions that the Ministry may apply under EAA s 14 (s 13 of the EAPWDA) and EAR s 31 (s 27 of the EAPWDR) are summarized in the Online Resource in the table as above, at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/sanctions>, indexed under "Reasons for Sanctions."

D. Conviction or Civil Judgment for Welfare Fraud

As of Sept 1, 2015, a person is no longer ineligible for income assistance, PPMB assistance or disability assistance ONLY because of either:

- A conviction under the Criminal Code in relation to obtaining welfare benefits by fraud or false or misleading representation (i.e. the former "lifetime ban" has been repealed);
- A conviction of a statutory offence under the EAA or EAPWDA (or prior welfare legislation); OR
- A declaration of ineligibility by the Ministry following the Ministry obtaining a civil judgment against them for a welfare overpayment.

People convicted of such offences either before or after September 1, 2015, or with declarations of ineligibility related to a civil judgment, can now qualify for regular income assistance, PPMB or disability assistance, if they meet all other eligibility requirements.

These family units are liable to repay the government, under section 27 of the EAA (s 18 of the EAPWDA), the amount or value of the overpayment that was the subject of the Criminal Code conviction and/or conviction under the EAA/EAPWDA and/or civil judgment. This amount is known as an "offence overpayment."

Section 89 and 89.1 of the EAR (74 and 74.1 of the EAPWDA) detail a minimum monthly welfare benefit deduction and repayment structure that applies to an "offence overpayment," as well as the exemptions from those deductions. The basic rule is a reduction of \$100 per month reduction in welfare benefits for each person in a family unit who has an "offence overpayment." Where a person was convicted under the Criminal Code, that deduction continues until the amount of the overpayment is repaid in full. Where a person was convicted of a statutory offence under the EAA or EAPDA, that deduction continues for:

- 12 months for a first conviction (unless the overpayment is repaid in less than 12 months)
- 24 months for a second conviction, (unless the overpayment is repaid in less than 24 months); and
- For a third or subsequent conviction, until the amount of the third or subsequent overpayment is repaid.

There is some degree of ministerial discretion to waive the minimum \$100 repayment requirements in a given benefit month. The minister may waive the repayment for the following reasons:

- The minister is satisfied that the family unit is homeless or at risk of becoming homeless;
- The minister is satisfied that a deduction would result in danger to the health of a person in the family unit; OR

- A recipient in the family unit is liable for an offence overpayment but the person convicted of the criminal code offence or Act offence that resulted in the offence overpayment is not a member of the family unit for the benefit month.

Clinicians should consult the above-reference sections of the EA and EAPD legislation to see what specific repayment structure matches the client's current family unit and welfare benefit status, and what exemptions they might be entitled to.

E. Providing Inaccurate or Incomplete Information to the Ministry

If a household provides inaccurate or incomplete information regarding eligibility (under s 10 or 11 of the EAA or EAPWDA), and as a result receives assistance for which it was not eligible, the Ministry may apply sanctions under s 15.1 of the EAA (s 14.1 of the EAPWDA) and ss 32-34 of the EAR (ss 28-30 of the EAPWDR).

NOTE: The details of the sanctions that the Ministry may apply under s 15.1 of the EAA (s 14.1 of the EAPWDA) and ss 32-34 of the EAR (ss 28-30 of the EAPWDR) are summarized in the Ministry's Policy and Procedures Manual at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/sanctions>

F. Outstanding Warrants

Since 1 June 2010, the legislation (EAA, s. 15.2 and EAPWDA, s 14.2) has provided that where there is an outstanding warrant for a person under the Immigration and Refugee Protection Act or any other enactment of Canada in relation to an indictable offence, that person will be ineligible to receive income assistance, disability assistance, or hardship assistance. Exceptions to these rules include people under 18, pregnant women, and people in the end stage of a terminal illness (see the EAR, s 38.1 and EAPWDR, s 34.1 for details).

If the Ministry cuts off a person's assistance due to an outstanding warrant, the person may appeal the decision by requesting reconsideration by the Ministry. If the reconsideration is unsuccessful, a further appeal may be filed to the Employment and Assistance Appeal Tribunal (EAAT). While the appeal is in progress, the person should be able to collect a repayable appeal supplement.

If a person is ineligible to collect assistance due to an outstanding warrant, they may be able to collect two other forms of financial help:

1. A repayable monthly supplement may be paid if a person can show that without financial help, undue hardship will be experienced. Normally, this form of assistance can only be paid for three consecutive months, unless the Ministry authorizes payment for up to three additional months; OR
2. A repayable transportation supplement may be available to those whose warrants were issued in a jurisdiction other than the one in which they live and who are not able to cover the expense of traveling to that jurisdiction to deal with the warrant. The amount of this supplement is limited to the cost of the least expensive mode of travel.

If the Ministry denies a person's application for these two supplements, a request for reconsideration may be filed, but if that fails, no appeal may be made to the EAAT.

If a person has a warrant that makes them ineligible for welfare, other people in their family unit can still get welfare.

For more information about how an outstanding warrant may affect a person's eligibility for income assistance, the Community Legal Assistance Society of BC has published a detailed fact sheet at: http://d3n8a8pro7vhm.cloudfront.net/clastest/pages/79/attachments/original/1401252000/Outstanding_warrants_fact_sheet_FINAL.pdf?1401252000

G. Labour Disputes

Applicants are not eligible for income assistance, PPMB assistance, or disability assistance if they or their adult dependant are on strike or locked out (EAR, s 14 and EAPWDR, s 13). An applicant in this situation may, however, qualify for hardship assistance under s 45 of the EAR or s 40 of the EAPWDR. If a person is not on strike themselves but cannot go to work because their union is honouring another union's picket line, they can apply for income assistance.

H. Being in Prison or “Other Lawful Place of Confinement”

A person in a “lawful place of confinement” or on temporary leave from such a place is not eligible for assistance: s 15 of EAR and s 14 of EAPWDR. However, pre-release prisoners are eligible to apply for welfare on an expedited basis, based on an immediate needs assessment (see the Ministry's policy at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/application-and-intake/immediate-needs>). This is intended to ensure that they can receive welfare immediately upon their release. The John Howard Society (www.johnhowardbc.ca) provides pre-release planning assistance for prisoners, including help with welfare applications.

I. Being a Full-Time Student

Full-time students who are eligible for student loan funding are not eligible for income assistance or PPMB assistance during the school term (EAR, s 16). The dependent children of income assistance and PPMB recipients are not affected by this limitation.

Section 1 of the EAR defines the term “full-time student,” and s 16(2) of the EAR sets out the period during which a full-time student is ineligible for income assistance or PPMB.

Full-time students who are no longer eligible for student loan funding because they have used up their allowable loans, bursaries, or grants may be eligible for income assistance during summer break if they cannot find work.

Recipients of disability assistance and their dependants are not restricted from being either full-time or part-time students.

Students who are enrolled in unfunded programs (where student loans are not available)—such as high school completion and adult basic education or students whose post-secondary education is sponsored under a federal or provincial government plan—may remain eligible for income assistance or PPMB benefits if they have received prior approval from the minister. See EAR s 16(1)(b).

Single parents approved for the Single Parent Employment Initiative may also remain eligible for income assistance or PPMB benefits while they attend a funded program of studies (providing those studies are required in their Employment Plan). See EAR s 16(1.2).

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

J. Student Funding And Income Exemptions

For students who receive **disability assistance**, the following things are all exempted as income: education and training allowances, scholarships, grants, bursaries and money from an RESP. However, student loans advanced to recipients of disability assistance are only exempt as income up to the amount of the person's "education costs" and "daycare costs." Both those terms are defined in section 8 of Schedule B to the EAPDWR.

Certain students who receive **income assistance or PPMB benefits** can have funds from training allowances, student loans, grants, bursaries, scholarships, or RESPs exempted by the Ministry as their "income" up to the amount of their "education costs" and "childcare costs." Both those terms are defined in section 8 of Schedule B to the EAR. This applies if:

- The student is the dependent child (under 19) of a recipient of income assistance or PPMB benefits;
- The person is a part-time student in a program that is not eligible for student loan funding;
- The person has received prior permission from the Ministry to enroll as a full-time student in a program that is not eligible for student loan funding;
- The student has been excused by the Ministry from having employment-related obligations under s 29(4) of the EAR, and is enrolled part-time in a program that is eligible for student loan funding;
- The student is a part time student in a program that is eligible for student loans (note that students in this situation cannot have grants, bursaries or scholarships from Canada Student Loans exempted as income); OR
- The student is in Ministry's Single Parent Employment Initiative and in a program that is eligible for student loans (note that students in this situation cannot have grants, bursaries or scholarships from Canada Student Loans exempted as income).

K. Leaving the Province for More Than 30 Days

Welfare recipients who leave British Columbia for more than a total of 30 days in a calendar year usually 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 and still get welfare, they must 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.

L. 24-Month Time Limit on Welfare Removed

Prior to October 1, 2012, recipients classified as employable were only eligible for benefits for a total period of 24 months out of every 60 months (see former section 27 of the EAR). Now, there is no longer a time limit and after 24 months there will be no reduction in benefits.

M. If The Ministry Refuses Income Assistance, PPMB Benefits, Or Disability Assistance

If the Ministry finds someone ineligible for income assistance, PPMB benefits, or disability assistance, ensure that they receive this in writing, as they may want to challenge this decision. They may also still be eligible for hardship assistance.

VI. HARDSHIP ASSISTANCE

Applicants who do not qualify for regular monthly income assistance, PPMB benefits or disability assistance under the EAA or EAPWDA might still qualify for hardship assistance. See s 5 of the EAA and Part 4 of the EAR, and s 6 of the EAPWDA and Part 4 of the EAPWDR.

Hardship assistance is provided only for the month in which it is applied for. Applicants who are still in need the following month must apply again. Hardship rates are different for people with and without PWD or PPMB status. Schedule D of the EAR and of the EAPWDR lists the maximum rates of hardship assistance. Section 1 of Schedule D in each Regulation states that applicants in this category are not entitled to a specific amount of hardship assistance and that the actual amount is at the discretion of the Ministry, based on the financial need of the applicant. However, in practice, the Ministry usually grants eligible applicants the maximum hardship rate. A table showing maximum hardship rates is available at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables>

The minister may require that applicants for hardship assistance enter an agreement to repay any assistance received under s 5 of the EAA and s 6 of the EAPWDA. Only some categories of hardship assistance are repayable, as set out in Part 4 of the EAR and EAPWDR

In order to qualify for hardship assistance, one must:

- Be at least 19;
- Live in BC;
- Meet the citizenship requirements for income assistance; AND
- Fall into at least ONE of the following categories:
 - Their immigration sponsor cannot or will not support them and they are waiting for the Ministry to make a decision about the application made for income assistance.
 - They are waiting for a Social Insurance Number or other identification documents.
 - They have applied for money from another source (e.g. Employment Insurance or Old Age Security), but they have not received it yet (this hardship assistance will have to be paid back).
 - They are on strike or locked out and they do not have money to support themselves (this hardship assistance will have to be paid back).
 - They have more income or assets than people applying for welfare are allowed to have, but they have a dependent child or children and cannot use the income or assets to support themselves or their family (this hardship assistance will have to be paid back).
 - The person has an immediate need for food, shelter or urgent medical attention and cannot complete the three or five week work search without hardship assistance (“immediate needs assessment”)

NOTE: If the Ministry declares that someone does not qualify for hardship assistance, this decision can be reconsidered and appealed.

VII. WELFARE OVERPAYMENTS AND FRAUD

A. What is a Welfare Overpayment?

If a person receives any form of welfare benefit or supplement that they are not entitled to, those benefits are considered to be an overpayment. Overpayments can range from a few dollars to tens of thousands of dollars. **Many overpayments arise not out of fraud by the welfare recipient but rather out of an honest error on the part of either the recipient or the Ministry.**

When a person has received an overpayment from the Ministry for any form of benefit under the welfare legislation, the overpayment is a debt owed to the Crown. According to EAA, ss 27-28 and EAPWDA, ss 18-19, the government may recover the debt by deducting funds from subsequent payments of income assistance or pursuing a court action.

NOTE: If a client faces a civil lawsuit for a welfare overpayment resulting from failure to provide complete or accurate information, refer him or her to a lawyer at the Community Legal Assistance Society.

B. Repayment Agreements and notification of other Overpayment

The Ministry may ask people suspected of having received a welfare overpayment to sign a repayment agreement acknowledging the alleged debt. Before signing a repayment agreement, clients should ask to review the Ministry's evidence and its reasons for the determination that there is an overpayment and, if possible, get legal advice or help from an advocate. The Ministry can often make errors in its overpayment determinations. See the Ministry's policy on recoveries and overpayments at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/compliance-and-debt-management/recoveries>

In many situations, it is advisable to not sign an acknowledgment. However, if the 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.

C. Appealing an Overpayment Decision

A welfare recipient can apply for reconsideration and appeal of a decision by the Ministry that they owe an overpayment. However, the Ministry's decision about the **amount** of a person's overpayment is **not open to appeal** (EAA, s 27(2) and EAPWDA, s 18(2)), although a person can apply for a reconsideration of the amount of an overpayment (for more on reconsiderations and appeals, see section IX below).

In *Newfoundland (Social Services Appeal Board) v Butler*, [1996] NJ 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

D. Welfare Fraud

Some overpayments result not out of an honest error, but rather out of a recipient's knowing failure to provide the Ministry with accurate information about his or her eligibility.

Section 31 of the EAA and s 22 of the EAPWDA set out when a person is considered to have committed a statutory offence of welfare fraud. Welfare recipients can also be charged with fraud under the Criminal Code.

Where the Ministry receives information regarding potential fraud or non-disclosure, it will investigate and may take one or more of the following steps:

- Refer to the Crown for charge approval under the Criminal Code, the EAA or the EAPWDA;
- Take civil action to recover the overpayment;
- Enter into a repayment agreement with the recipient;
- Overpayment notification and deduction of established overpayment(s) from future benefits; or
- Deduction for offence overpayments, where the person has been convicted of a charge under the Criminal Code, EAA or EAPWDA

NOTE: If a client has been charged criminally with welfare fraud, this creates a potential “loss of livelihood” issue, so refer them to the Legal Services Society to see if they are eligible for a legal aid criminal lawyer. If the client is not eligible for Legal Aid, LSLAP may be able to assist them.

VIII. WELFARE RATES AND PAYMENT ISSUES

A. Income Assistance, PPMB Assistance, and Disability Assistance Rates

People who are eligible for income assistance, PPMB assistance, or disability assistance are entitled to the amounts determined in Schedule A of the EAR or EAPWDR, minus any non-exempt net income

All rates are monthly and set out in Schedule A of the EAR and EAPWDR. The rates are divided into a portion for shelter, and a separate portion for support (which is intended to cover all living expenses other than shelter, including food, clothing, etc.). The shelter portion is listed as a maximum. The Ministry will only pay the lesser of a person’s actual shelter costs or the maximum listed shelter allowance. Below are examples of monthly rates for different family configurations:

- For a single person under age 65 on income assistance: \$335.00 for support plus up to \$375.00 for shelter, for a total of **\$710.00 per month.**
- For a single person under 65 on PPMB assistance: \$382.92 for support plus up to \$375.00 for shelter, for a total of **\$757.92 per month.**
- For a four-person family (two parents, both under age 65, and two children) on income assistance: \$501.06 for support plus \$700.00 for shelter, for a total of **\$1 201.06 per month.**
- For a couple under age 65 where one person has Persons with Disabilities status: \$ 927.56 for support and \$570 for shelter, for a total of **\$1 497.56 per month.**

NOTE: Helpful rate tables are online at <http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables>. These show the shelter support and shelter rates for all forms of assistance under the EAA and EAPWDA

B. Persons with Disabilities Transportation Supplement:

Beginning January 1, 2018, people receiving disability assistance will receive an extra \$52 per month for a new transportation supplement. This is available to all people with the PWD designation, and can be used for an annual bus pass or for other transportation needs. It can be received as cash or as an in kind bus pass, and individuals can apply for or cancel their bus pass at any time during the year. See section 54.2 of the EAPDWR.

People who stop receiving disability assistance benefits for certain reasons may be able to keep this transportation supplement for a period of time. See the Ministry’s policy about the “transitional transportation support” at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/general-supplements-and-programs/transportation-supplement?keyword=transporation&keyword=supplement>

C. *Canada Child Benefit:*

In addition to the support allowance, families may also receive the Canada Child Benefit for children under 18, which includes the old Universal Child Care Benefit for children under 6, the former Canada Child Tax Benefit, and what was called (until 2016) the national child benefit supplement. If a family’s Canada Child Benefit for a given month is less than what sections 1 of the EAR and EAPDR define as the “BC child adjustment amount” (see table below) for each child aged two months to 18 years, (e.g. because a child is ineligible, or a check is delayed), then the Ministry may issue a top up to that amount, as per the chart below. See also EAR Schedule A, section 2(2).

Number of Children	Maximum BC child adjustment amount
One	\$195.02 per month
Two	\$367.56 per month
Each additional child beyond two	\$164.18 per child, per month

D. *Calculating the Shelter Allowance*

Recipients of income assistance, PPMB assistance, and disability assistance are eligible for a monthly shelter allowance equivalent to their actual shelter costs, **up to the maximum set out in the Regulations** for their household size:

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

Recipients are eligible for the full monthly shelter amount only if they are paying at least that much in shelter costs. Schedule A, s 5 of the EAR and EAPWDR set out what expenses 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. Note that the definition of “utility costs” in Schedule A, s 5(1) of the EAR and EAPWDR is quite broad.

Where two or more family units share the same place of residence, the family units’ shelter costs are calculated according to s 5(4) of Schedule A of the EAR and EAPWDR.

E. Rates for People Receiving Room and Board

Schedule A, s 6 of the EAR and EAPWDR set out the method for calculating the income assistance and disability assistance rates for a family unit receiving room and board.

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.

People with the PWD designation who receive room and board are also eligible for the Persons with Disabilities Transportation Supplement described in section B above.

F. Rates for People Living in Emergency Shelters and Transition House

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

G. Rates for “Transients”

Schedule A, s 10 of the EAR sets out the amount of income assistance available to a person that falls under the legislative definition of “transient” (in s 1 of the EAR). The EAPWD legislation does not have a definition of “transient” nor rules that apply to “transients.”

H. Rates for People in a Special Care Facility

“Special care facility” is defined in s 1 of each regulation as a specialized adult residential care setting approved by the Ministry or a licensed boarding home, alcohol or drug treatment centre, a personal care facility, or intermediate care facility. Schedule A, s 8 of EAR and the EAPWDR sets out what the Ministry will cover for shelter and support for a person residing at such a facility.

I. Children in the Home of a Relative (CIHR) - repealed

Until 31 March 2010 the EAA provided that if a child was supported in the home of a relative other than the child’s parent and no parent of the child was able to pay the total cost of the child’s care, the Ministry would pay income assistance according to the child’s age:

Age Group	Monthly Rate
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)

The CIHR provisions were repealed as of 1 April 2010 (BC Reg 48/2010). **However, these provisions still apply to families that include children who were approved under the old provision prior to 31 March 2010, or who filed their applications prior to 31 March 2010 and were subsequently approved** under the old provision (see the Child in the Home of a Relative Transition Regulation). The following repealed sections contained key provisions dealing with Children in the Home of a Relative: EAR s 6; s 11(1)(b)(iv); s 27; s 29; s 33; s 34; s 34.1; 49; 50; 60; 61; 67; 67.1; 68; 71; 73; 74.01; 75; and Schedule A, s 11.

J. Method of Payment of Assistance

The Ministry’s standard method of payment is by direct deposit by Electronic Funds Transfer (EFT) into the recipient’s bank account. Applicants can generally get an exemption where EFT payment is not appropriate for them. Such recipients typically receive their benefit cheque by picking it up from the Ministry office, or by mail. The Ministry also commonly pays recipients’ shelter allowances directly to their landlords. This is optional.

K. 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.

IX. ADDITIONAL ALLOWANCES AND BENEFITS

The Ministry may provide a number of additional supplements in certain specific circumstances. This section will outline some of these supplements. However, Part 5, Divisions 1-4 and 6 of the EAR and Part 5, Divisions 1-3 and 5 of the EAPWDR will need to be reviewed for complete details.

A. Crisis Supplements

A crisis supplement is a one-time grant for a welfare recipient 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 are provided pursuant to s 59 of the EAR and s 57 of the EAPWDR and do not have to be repaid.

Before issuing a crisis supplement, the Ministry 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.

A person might be eligible for a crisis supplement to buy necessities like winter coats, baby cribs, or a new appliance. 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, they may ask the Ministry for a crisis supplement.

The legislation sets out maximum amounts for crisis supplements:

- For food, \$20 per person per month;
- For clothes, \$100 per person per year or \$400 per family per year, whichever is less;
- For shelter, the actual shelter costs up to the maximum shelter rate of the family for one month only.

NOTE: If the crisis supplement is for clothing or furniture, the Ministry may ask the applicant to look for second-hand goods. They may ask the applicant to get three estimates for the cost of the service of goods required.

The maximum cumulative total of crisis assistance provided in any 12-month period is the equivalent of two months' assistance for the family unit. This amount may be exceeded if the person requires a crisis supplement for fuel for heating or cooking, water or hydro.

The amount of a crisis supplement is not subject to appeal, but the denial of a crisis supplement can be appealed.

If a person is given six or more crisis supplements in 12 months, their benefits may be administered, which means that the Ministry may begin sending the welfare recipient several small cheques over the course of a month instead of one cheque. The Ministry may also begin paying the person's rent directly to their landlord.

NOTE: BC Hydro has recently started offering a "Customer Crisis Fund" ("CCF") which helps pay off hydro arrears for residential customers who are experiencing a "temporary financial crisis" due to a "life event" within the past 12 months (e.g. a death in the family, unanticipated medical expenses, loss of income... etc.). The CCF assists customers who are overdue on their payments and facing disconnection of their services. Maximum annual grants are \$500 for customers with non-electrical heat in their homes, or \$600 for those heating their homes with electricity. Customers do not need to be on welfare to apply for this grant. More information on eligibility and application for the Customer Crisis Fund can be found on the BC Hydro Website: <https://app.bchydro.com/accounts-billing/bill-payment/ways-to-pay/customer-crisis-fund.html>

B. Other Supplements

Apart from crisis supplements, other supplements that may be available under the legislation include:

- A pre-natal shelter supplement;
- A Christmas supplement;
- School start-up supplements;
- Community volunteer supplements;
- Clothing and transportation supplements for people confined to special care facilities;

- Supplements where a person needs to obtain new proof of identity;
- Supplements associated with an employment plan or a confirmed job;
- Moving and transportation supplements;
- Supplements for security deposits;
- Advances for lost, stolen, delayed, or suspended family bonus cheques;
- Supplements for guide animals;
- Seniors' supplements;
- Funeral, burial, or cremation supplements; and
- Transportation supplements

Note that this is a non-exhaustive list. Some of these supplements are repayable and others are not. See Part 5 of the EAR and EAPWDR for details.

X. HEALTH SUPPLEMENTS

A. Introduction

Schedule C of the EAR and EAPWDR set out the availability of supplements for health and dental services, including optical and orthodontic services. See also Part 5, Division 5 of the EAR and Part 5, Division 4 of the EAPWDR.

B. General Health Supplements

Section 67 of the EAR and s 62 of the EAPWDR set out the eligibility criteria for general health supplements. These criteria should be reviewed carefully in relation to any issue relating to a health supplement.

C. “Medical Services Only”

Section 66.3 of the EAR and s 61.1 of the EAPWDR provide that persons may be eligible for “medical services only” in certain circumstances when they are not eligible for income assistance, PPMB, or disability assistance.

D. Optical Care

If the person is between 19 and 64 and gets income assistance, hardship assistance, PPMB, or PWD benefits OR has Medical Services Only Status, they can receive an eye exam every 24 months. Further, children may receive one pair of glasses per year and adults may receive one pair of glasses every three years.

Sections 67.1 and 67.2 of the EAR and ss 62.1 and 62.2 of the EAPWDR set out eligibility criteria for certain optical benefits. See also ss 2.1 and 2.2 of Schedule C of the EAR and ss 2.1 and 2.2 of Schedule C of the EAPWDR.

E. Dental Care

Sections 68, 68.1, 69, 70, and 71 of the EAR and ss 63, 63.1, 64, and 65 of the EAPWDR set out eligibility criteria for supplements for dental work, crown and bridgework, dentures, emergency dental and denture work, and limited orthodontic work. See also ss 4, 4.1, 5, 6, and 7 of Schedule C of the EAR and ss 4, 4.1, and 5 of Schedule C of the EAPWDR.

F. “Healthy Kids” supplements

Sections 72, 72.1, and 77.03 of the EAR provides for certain optical, dental, hearing instrument, and alternative hearing assistance supplements for dependent children of welfare recipients. See also Schedule C.

G. Alternative Hearing Supplement

Sections 77.02 of the EAR, section 70.02 of the EAPWDR, and section 11 of Schedule C to both the EAR and EAPWDR, allow a \$100 supplement for applicants with profound hearing loss. This supplement may only be provided where the applicant has profound hearing loss in both ears and would not benefit from a hearing instrument.

H. Diet and nutrition

Sections 73, 74, 74.01, 74.1, and 75 of the EAR and ss 66, 67, 67.01, 67.1, and 68 of the EAPWDR set out eligibility criteria for supplements for diet supplements, nutritional supplements, supplements for those who require tube feeding, infant health supplements, and natal supplements for pregnant women. See also ss 8, 9, and 10 of Schedule C of the EAR and ss 6-9 of Schedule C of the EAPWDR.

NOTE: Monthly nutritional supplements are only available for people who receive disability benefits from the Ministry. Further, the person must be being treated for a "chronic, progressive deterioration of health on account of a severe medical condition". It is very hard to meet the requirements for this supplement. See s 67(1.1) of the EAPDWR for more information. Disability Alliance BC has a useful help sheet regarding the monthly nutritional supplement, at <http://disabilityalliancebc.org/category/publications/help-sheets/>.

I. Medical equipment and devices

Where a person meets eligibility criteria (see s 67 of the EAR and s 62 of the EAPWDR), the Ministry may provide funding for certain medical equipment and devices. The devices and eligibility criteria are listed in sections 3 through 3.12 of Schedule C of each regulation. The devices may include:

- Canes, crutches, and walkers;
- Wheelchairs;
- Scooters;
- Bathing and toileting aids;
- Hospital bed;
- Pressure relief mattresses;
- Floor or ceiling lift devices;
- Positive airway pressure devices;
- Apnea monitors;

- Nebulizers;
- Positioning items on a bed, positioning chairs, and standing frames;
- Ventilator supplies;
- Orthoses; and
- Hearing aids.

NOTE: In order to qualify for these supplements, a prescription from a qualified medical practitioner must be supplied and the cost must be pre-approved by the Ministry. There are very detailed eligibility criteria that must be met for each item requested. See Schedule C of both Regulations for details.

J. Medical and Surgical Supplies

Certain “disposable or reusable” medical supplies may be provided if they are necessary to prevent the recipient from becoming very ill (to avoid what the Ministry calls “an imminent and substantial danger”) and if they are prescribed by a doctor. See s 2(1)(a) of Schedule C of each Regulation.

The supplies are only available if they are needed for one of these following purposes: wound care; ongoing bowel care required due to loss of muscle function; catheterization; incontinence; skin parasite care; or limb circulation care.

The supplies must be the least expensive ones appropriate for the purpose. Exclusions to this list include: nutritional supplements, food, vitamins and minerals, and prescription medications.

K. “Direct and Imminent Life-Threatening Health Need”

Section 76 of the EAR and s 69 of the EAPWDR provide that the Ministry may provide certain health supplements to a person who is otherwise ineligible for the supplements (or indeed, for welfare benefits), if the person can show that the person faces an **imminent and life-threatening need** that cannot be addressed except by the supplement. See the Regulations for details.

L. Alternative and Complementary Therapies

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. See Schedule C, s 2 of each Regulation, especially s 2(c).

M. Transportation to Medical Appointments

Under Schedule C, s 2(f) of each Regulation, the Ministry may cover the cost for the least expensive mode of transportation to and from the office of a local medical practitioner, nurse practitioner, specialist, general hospital, rehabilitation hospital, provided that:

- 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
- There are no resources available to the person's family unit to cover the cost.

XI. APPEALS

A. What Can Be Appealed

It is possible to appeal most the Ministry decisions that deny, reduce, or discontinue welfare benefits of any kind, including supplements. See s 17 of the EAA and s 16 of the EAPWDA.

The legislation list certain supplements for which decisions cannot be appealed to the Employment and Assistance Appeal Tribunal: see EAR, s 81, and EAPWDA, s 73. Note however that a person may still apply for reconsideration of decisions related to those supplements. In addition, one cannot appeal decisions regarding the terms of employment plans to the Tribunal, but they can be reconsidered (see s 9 and 17(1)(e) of the EAA).

NOTE: If a client would like a review of a decision that is not open to reconsideration and/or appeal, they may still request an internal administrative review by registering a complaint with the supervisor at a local Ministry office. This may be particularly useful for service quality issues. This is entirely separate from the appeal process.

B. Two-Level Appeal Process

There is a two-level appeal process for reviewing decisions by the Ministry. The levels are:

- Reconsideration (which is an administrative review done within the Ministry) and
- Appeal to the Employment and Assistance Appeal Tribunal or “EAAT” (an independent tribunal).

To seek reconsideration, a person must obtain and complete a “Request for Reconsideration” form and return it to the Ministry **within 20 business days of being notified of a decision**, along with relevant documents, to request a reconsideration of a Ministry decision. “Request for Reconsideration” forms can be picked up at Ministry offices.

To appeal a reconsideration decision to the EAAT, a person must submit a Notice of Appeal form within **seven business days** of being notified of the reconsideration decision.

C. Reconsideration and Appeal Supplements (Benefits While an Appeal is Pending)

If a recipient is seeking reconsideration or appeal of a decision to discontinue or reduce a benefit or supplement, they may continue to receive the benefit or supplement while awaiting the outcome of the reconsideration or appeal. This is called a “reconsideration supplement” or “appeal supplement”.

Before paying a reconsideration or appeal supplement, the Ministry requires people to sign an agreement saying they will repay the benefit if the appeal fails. See s 54 of EAR and s 52 of EAPWDR.

D. Commonly Appealed Decisions

Some decisions for which people commonly seek reconsideration and appeal are:

- A decision denying someone PWD status under s 2 of the EAPWDA;
- A decision denying someone a special supplement for which they have applied;
- A decision that a person is in a “dependent” relationship with someone they live with (e.g. a spousal relationship), and that they must therefore be treated as being in the same family unit; and
- A decision that a person has received a welfare overpayment that they must repay.

There are many other types of decisions that can be appealed.

NOTE: Whenever a client asks about appealing a decision, begin by checking s 17 of the EAA, s 16 of the EAPWDA, s 81 of the EAR, and s 73 of the EAPWDR to ensure the decision is appealable. Then, review the legislation to understand the law affecting the decision.

E. APPEAL LEVEL 1: Reconsideration

Reconsideration is a “paper review” by the Ministry with no hearing. To request reconsideration, the client needs to fill in Request for Reconsideration form. They may need to ask for this form, although often it will come with the Ministry decision.

The client **must** get the completed request for reconsideration in to the Ministry **within 20 business days from the day the client was informed of the decision.**

A client should submit the following with a request for reconsideration:

- **Evidence:** any relevant documentary evidence can be submitted with the request for reconsideration. It is essential to provide complete evidence at this stage, and cover all possible evidentiary issues, as only limited evidence is allowed at next appeal stage; AND
- **Argument:** it is also good to provide a written summary outlining why the client is eligible for the benefit.

If a client is not able to submit all relevant evidence and argument to the Ministry within the 20 business day deadline, they can request (in writing) an extension to do so of up to 10 business days. They must still submit the completed Request for Reconsideration form to the Ministry within the initial 20 business day deadline, but can indicate on that form that they require an extension of time to provide supporting evidence and argument.

Once a completed Request for Reconsideration form is submitted to the Ministry, the Ministry must provide a written response to the reconsideration request within 10 business days. Section 80(b) of the EAR, and s 72(b) of the EAPWDR provide that, with the agreement of both parties, the Ministry may have up to an additional 10 business days to make its decision. These are the sections that are relied upon when requesting an extension of time to provide additional evidence and argument in support of a client’s completed Request for Reconsideration form.

NOTE: While going through this process, it is also well worth contacting the Supervisor at the client’s Ministry office to try and negotiate a solution, particularly if the decision appears to be obviously unfair and out of line with the legislation.

F. APPEAL LEVEL 2: Appeal to the EAAT

The EAAT is an independent tribunal. See its website at www.gov.bc.ca/eaat. Its website has many useful materials including a set of practices and procedures, guidelines, forms, and a member code of conduct.

The EAAT holds oral and written hearings. Oral hearings may be done in person or by teleconference. An oral, in-person hearing should always be available if the client requests one. Oral hearings may be important in circumstances where there are issues as to credibility (e.g. the seriousness of a disability).

To request an appeal, file a Notice of Appeal with the EAAT or deliver it to a local Ministry office. The EAAT or the Ministry must receive the notice of appeal within **7 business days** from the day the client gets the reconsideration decision. One does not need to file evidence or argument at the same time as filing the Notice of Appeal, although one could do so.

The EAAT will hold the hearing within 15 business days of the notice of appeal, unless the client consents to having it later.

If an applicant needs more time once they have filed the notice of appeal, the Tribunal has an adjournment request form online. Ideally the applicant should get the Ministry to consent to the adjournment and send the form in at least 24 hours before the hearing. Applicants can also ask for an adjournment on the day if there is good reason.

The following are some notes about the EAAT process:

- Appeal panels typically have 3 members, but sometimes have 2 or even 1 member;
- The EAAT applies the income assistance legislation and common law;
- It cannot apply the Charter or Human Rights Code (see the Administrative Tribunals Act);
- While an EAAT hearing is formal, it is less formal than court. Rules of evidence are not strictly applied;
- The Ministry sends a representative to advocate for its point of view at most EAAT hearings; and
- Appellants before the EAAT may be represented by an advocate or legal counsel. LSLAP students may act in this capacity for clients.

The EAAT 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. Applicants can request an adjournment if there is good reason to do so, using an “Appeal Adjournment Request Form”. See also s 85 of the EAR.

Evidence can be given at an EAAT hearing in the following forms:

- **Documentary evidence**, which should be sent in to EAAT in advance if possible, but it is acceptable to bring it to the hearing, with enough copies for the three panel members and the Ministry representative); AND
- **Oral evidence** from client or supporters.

Completely new evidence is not supposed to be allowed before the EAAT, whereas evidence “supporting” what was put forward at reconsideration is allowed. There can sometimes be a fine line between new evidence and supporting evidence. The EAAT has a useful guideline on this issue, at http://www.gov.bc.ca/eaat/popt/additional_evidence.html

The EAAT must decide whether the Ministry’s reconsideration decision:

- Is reasonably supported by evidence; OR
- Is a reasonable application of the legislation to the circumstances of the person appealing the decision (s 24 of the EAA).

If so, the panel must uphold the Ministry’s decision, and if not, the panel must rescind the Ministry’s decision. If the decision of the tribunal cannot be implemented without some further determination, then the tribunal must refer the further determination back to the Ministry.

The EAAT panel must render its decision within five business days of the conclusion of the hearing. The EAAT chair then has five business days to mail a copy of it to all parties.

NOTE: If a client failed to submit key pieces of evidence with his or her request for reconsideration, it may not be worthwhile to appeal the decision to EAAT, since appellants are not permitted to present completely new information on appeal to EAAT. Therefore, it may be in the client’s best interest to re-apply for the benefit and provide proper documentation on the new application.

What can be appealed to the EAAT:

- A denial of PPMB or PWD status;
- A denial of a monthly benefit or supplement;
- A reduction of the amount of money received for monthly benefits or for a supplement;
- The existence of an alleged overpayment; OR
- A cancellation of a monthly benefit or supplement.

What cannot be appealed to the EAAT:

- Whether someone has to sign an employment plan or have certain conditions in the employment plan;
- Refusing to change or cancel an employment plan once signed;
- How much of an overpayment is owed to the Ministry;
- Refusing to take part in a program set up under the welfare laws;
- Refusing certain benefits while the case is under reconsideration or appeal; OR
- Not giving a person a supplement related to their employment plan or to a confirmed job.

G. Judicial Review (if the Appeal to the EAAT is Unsuccessful)

If the EAAT decision is unfavourable, the appellant has two options:

OPTION 1 – RE-APPLICATION: Where the appellant has applied for a benefit and been denied, and where it is important for her to get the benefit right away, they can re-apply. If there is new evidence on which to base a new application that should be submitted; otherwise they can still reapply although their appeal rights on the new application will be limited if they cannot show that that has been a change in the client’s circumstances relevant to the appeal since they last appealed to the EAAT (see section 17 of the EAPD Act and section 18 of the EA Act).

OPTION 2 – JUDICIAL REVIEW: Where the decision is very seriously problematic (see below) and there is some benefit to having a court overturn the original decision, students can advise the client to seek judicial review in the BC Supreme Court.

A judicial review may be possible where the Tribunal decision has very serious problems with it, such as:

- Issues of procedural fairness;
- Errors of law; or
- Glaring errors of fact that a judge would be able to see just by reading the decision and looking at the documentary evidence.

Note there is a **60 day time limit** for bringing judicial reviews. A client who is interested in applying for judicial review of an EAAT decision should be referred to a lawyer at the Community Legal Assistance Society to have their case assessed for merit. LSLAP is not able to assist clients with judicial review.

H. Tips for the LSLAP Student Representative

- Representatives should read Part 6 of the EAR carefully to offer advice on the appeal process.
- The representative should determine what the issues are and read all of the relevant sections of the EAA or the EAPWDA and the associated Regulations.
- A representative should have the client fill out a “Consent to Disclosure of Information Service Authorization” (HR3189A) form authorizing the representative to examine the client’s Ministry file and to make service requests on behalf of the client (i.e. requests for reconsideration or appeal). The “Consent to Disclosure” (H3189) form authorizes only the release of information and does not authorize representatives to make service requests on the client’s behalf, so LSLAP students will generally want to use the former. These forms can be found here: <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/master-lists/forms-and-letters-master-list>.
- Also, if the case is at the EAAT level, a “Release of Information” form from the EAAT website should be completed. These forms are needed to communicate with the Ministry and the EAAT about the client’s case.
- If a client has received a decision from the Ministry but has not yet taken any appeal steps, the representative should advise him or her to obtain a “Request for Reconsideration” form from the Ministry and complete and return it to the Ministry. This must be done within 20 business days of getting the decision, and can be done online or in person. It is very helpful if you can help the client to fill in the Request for Reconsideration. Remember you can request an extension of time to submit further evidence and argument in support of a reconsideration (see page 41 above)
- If an applicant has already received a reconsideration decision, and the matter is appealable (see above) advise him or her to complete a Notice of Appeal form and to send it to the EAAT within seven business days of getting the reconsideration decision.
- With the law as set out by the Act and regulation in mind, the representative should get copies of all relevant documents and review the details of the client’s case. It is vital to have a clear, comprehensive account of the facts as your client understands them.

- If the applicant submits additional documentation as evidence, such as medical reports, affidavits, or receipts, make enough copies for the Ministry's representatives 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 well-organized.
- At all levels of appeal, it is best to have a written statement of one's presentation of the facts in case there is a judicial review. Hearings at the EAAT are not otherwise recorded.
- See above for specific tips on each level of appeal.

