

## **Welfare Law Legislative Update: October 1, 2015 to October 1, 2016**

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There have been a number of significant changes to welfare law since the last Provincial Advocacy Training Conference in early October 2015. .

### **SUMMARY**

1. Bundle of December 1, 2015 regulatory changes:
  - a) Recurring gifts and inheritances exempted as income for recipients of disability assistance;
  - b) Increase in asset exemption level for recipients of disability assistance, and for people on income assistance or PPMB benefits who receive care in a private hospital, special care facility, or are in hospital for extended care;
  - c) Elimination of the \$8 000 cap on amounts a trust can spend on items or services to promote the person's independence; and
  - d) Changes affecting students who receive disability assistance.
2. Guide Dog and Service Dog supplement extended to retired service and guide dogs, and to certification tests
3. Exemption of Worksafe benefits paid to children whose parent(s) died as a result of a work-related accident or of a fatal work injury or accident
4. Policy clarification that some insurance benefits can be considered an "other award" that is exempt up to a family unit's asset level
5. Simplification of PWD application process for prescribed classes of people
6. Nurse practitioners now qualified to complete the PWD application form, section 1
7. Bundle of September 1, 2016 regulatory changes:
  - a. Elimination of special transportation subsidy;
  - b. Slight increase to PWD support rate and introduction of Transportation Support Allowance; and
  - c. Changes to yearly bus pass program for PWDs.
8. Exemption of EI maternity and parental benefits, and EI benefits for parents caring for critically ill children as unearned income

## DETAILS

### 1. **Bundle of December 1, 2015 regulatory amendments:**

A number of regulatory changes came into effect on December 1, 2015, as follows:

#### a) **Recurring gifts and inheritances exempted as income for recipients of disability assistance**

Effective December 1, 2015, gifts (including recurring gifts) received by someone with the PWD designation are exempted as income by MSDSI. Prior to this change, only "one time" gifts could be exempted as income for recipients of disability assistance. Inheritances are also now exempt as income for recipients of disability assistance. See EAPD Regulation, Schedule B, section 1(a)(xlviii) & (xlix). The legislation does not define "recurring" gifts, but policy makes it clear it can include, for example, a recurring gift such as a regular amount of money paid to a person with the PWD designation by a relative or friend.

Gifts and inheritances are not exempted as assets for recipients of disability assistance, but see section b for changes in the PWD asset exemption level.

#### Recurring gifts and inheritances not exempt for income assistance and PPMB recipients

Inheritances are still considered non-exempt unearned income under the EA Regulation (see the new definition of "gift" in section 1 of the EA Regulation).

Non-recurring gifts remain exempt as income for income assistance and PPMB recipients. This rule, which was the result of a court case in the 1990s, has now been codified in the EA Regulation. That is, "gifts, other than recurring gifts" have been specifically exempted as income (see EA Regulation, Schedule A, section 1(a)(xlvii)). The term "recurring gift" is not defined in the legislation. In addition, the definition of "unearned income" in section 1 of the EA Regulation has been amended to specify in subsection (y) that payment of a person's debt or obligation by a third party is now considered a "gift" by MSDSI.

#### b) **Increase in asset exemption level for recipients of disability assistance, and for people on income assistance or PPMB benefits who receive care in a private hospital, special care facility, or are in hospital for extended care**

Also effective December 1, 2015, a family unit in which one person has the PWD designation can now have assets (that are not otherwise exempted under the welfare legislation) of up to \$100 000, without this affecting their eligibility for disability assistance (see EAPD Regulation, section 10(2)(a)). The prior general asset exemption level for family units in this category was \$5,000.

Couples where both adults have the PWD designation (or one has the PWD designation and the other's PWD application is awaiting adjudication) now have a

general asset exemption level of \$200 000.00 (increased from \$10 000). See EAPD Regulation, section 10(2)(b) and (c).

These new PWD asset exemption levels also apply to people applying for income assistance where MSDSI believes the person has a genuine intent to apply for the PWD designation, and to people who have applied for the PWD designation, and are waiting for a decision to be made about their eligibility for that status. See EA Regulation, section (2.1)(a) and (b).

The new \$100 000 asset exemption level also applies to a person receiving income assistance or PPBM benefits who receives accommodation and care in a private hospital or special care facility (other than an alcohol or drug treatment centre), or who is admitted to a hospital for extended care. A family unit who has two members in this situation will have an asset exemption level of \$200 000. See EA Regulation, section 11(2)(c) and (d).

- c) **Elimination of the \$8 000 cap on amounts a trust or structured settlement annuity can spend on items or services to promote a person's independence**  
Prior to December 1, 2015, if a trust spent more than \$8 000 per calendar year on items or services to enhance the independence of the beneficiary of the trust, MSDSI considered expenditures about \$8 000 to be the person's income, and those amounts were deducted from the person's disability assistance check (or income assistance or PPMB check, for those few categories of people on income assistance or PPMB that are allowed to have trusts),

As of December 1, 2015, this cap has been eliminated. There is now no limit on the amount of money that can be taken out of a trust to purchase items or services that promote the independence of the beneficiary of the trust. See EAPD Regulation, Schedule B, section 7(1)(d.3)(i), and EA Regulation, Schedule B, section 7(1)(d.3)(i). Structured settlement annuity payments are also affected by this change. That is, there is no longer any dollar cap on the value of items or services to promote independence that can be purchased with structured settlement annuity payments. The Ministry will not consider payments used for that purpose to be the income of a person who receives income assistance or disability assistance benefits. See EAPD Regulation, Schedule B, section 7(1)(d.3)(ii) and EA Regulation, Schedule B, section 7(1)(d.3)(ii).

- d) **Changes affecting students who receive disability assistance**

As of December 1, 2015, education and training allowances, scholarships, grants and bursaries, and money withdrawn from an RESP are all exempted as income for people who receive disability assistance. See EAPD Regulation, Schedule B, sections 1(a)(l) & (li).

Student loans for recipients of PWD benefits are still only exempt up to the amount of the student's education and daycare costs: see EAPD Regulation, Schedule B, section 8.

## **2. Guide Dog and Service Dog supplement extended to retired service and guide dogs and to certification tests**

Effective January 18, 2016, the guide and service dog supplement of \$95 per month is now available to eligible welfare recipients for the maintenance of retired certified guide or service dogs (in addition to active certified guide or service dogs). This change resulted from changes to the *Guide Dog and Service Dog Act*. See EAPD Regulation section 60, and EA Regulation section 62.

A policy change effective June 27, 2015, affects dogs that are going to take a certification test through the Justice Institute of BC. In this case, the supplement can be paid for up to two months before the certification test, to cover travel costs and certification test fee.

## **3. Exemption of Worksafe benefits paid to children whose parent(s) died in work-related accidents**

Effective March 18, 2016, benefits paid under section 17 or 18 of the *Workers' Compensation Act* to the child of a parent(s) who died of a work-related injury or accident, are exempted as income from all welfare benefits. Note that "child" is defined in section 1 and 17 of the *Workers' Compensation Act*, and can include disabled children over 19, and children up to age 25 who are in technical, vocational or academic studies. See EA and EAPD Regulation, Schedule B, section 1(a)(xlvi).

## **4. Policy clarification that some insurance benefits can be considered an "other award" that is exempt up to a family unit's asset level**

Effective July 18, 2016, MSDSI changed its "income treatment and exemption" policy to specify that insurance benefits paid for medical treatment or medical equipment can be exempted as income as an "other award" under EA and EAPD Regulation, Schedule B, section 7(1)(c), up to the family unit's asset level.

## **5. Simplification of PWD application process for prescribed classes of people**

As of September 1, 2016 a simplified, two page application form for the PWD designation can be accessed by people in the following five groups (MSDSI refers to these as "prescribed classes," as they are defined by regulation):

- i) A person who receives Canada Pension Plan disability benefits;
- ii) A person enrolled in Plan P (Palliative Care) under the Drug Plans Regulation;
- iii) A person who has at any time been found to be eligible for payments through MCFD's At Home Program;
- iv) A person who has at any time been found eligible by Community Living BC to receiving community living support; and

- v) A person whose family has at any time been found by Community Living BC to be eligible for community living support to assist that family in caring for the person.

A copy of the new two-page application PWD designation application for members of these groups is attached.

This regulatory change leaves open the prospect that, in future, the BC government may designate recipients of other government statuses or benefits to be eligible for this simplified application process, if satisfied that eligibility for that status or benefit requires evidence of a mental or physical impairment at least as severe as that required by the PWD designation.

See sections 2(2) and 26(2)(p) of the EAPD Act and section 2.1 of the EAPD Regulation.

#### **6. Nurse Practitioners now qualified to complete the PWD application form, section 1**

Effective September 1, 2016, nurse practitioners are now able to complete section 1 of the PWD application form (i.e. the "physician's report") in the same way that a medical doctor can. That is, nurse practitioners can now confirm that a person has a severe mental or physical impairment that is likely to continue for at least two years. Nurse practitioners still remain qualified to complete the assessor's portion of the PWD designation application form.

See section 2(2)(a) of the EAPD Act.

#### **7. Bundle of September 1, 2016 regulatory changes:**

##### **a. Elimination of special transportation subsidy**

Effective September 1, 2016, the special transportation subsidy was eliminated. Previously, the special transportation subsidy was paid annually on April 1<sup>st</sup> each year, and made \$66 per month available to PWD recipients who were medically unable to take the bus, but only if they lived in an area that had a local bus service (that is, people in rural areas without a local bus service could not qualify for the special transportation subsidy).

##### **b. Slight increase to PWD support rate and introduction of Transportation Support Allowance**

Also effective September 1, 2016, there was an increase of \$25 per month increase for all recipients of disability assistance. The new maximum support and shelter rate for a single person with the PWD designation is now \$931.42 (up from \$906.42). See EAPD Regulation, Schedule A, section 2(1).

In addition, a \$52 per month "transportation support allowance" (TSA) was introduced for each individual with the PWD designation in a family unit. See section EAPD Regulation,

section 24.1. A single person who elects to receive that in cash would now receive a total of **\$983.42** per month. A recipient can choose to receive the transportation support allowance in cash, or in the form of an in-kind bus pass. For more on the TSA and bus passes, see section c below.

\* **Note:** People who have not been eligible for PWD benefits in the past (e.g. because their income from another source such as CPP disability benefits or private long term disability benefits was above the old maximum PWD rate) may now qualify for PWD as a result of these changes. A single person whose income from other sources is less than \$983.42 can apply for the PWD designation (if they do not already have it) and a disability top up to bring their monthly income up to \$983.42.

The EAPD Regulation defines the TSA as a form of disability assistance. Section 24.1(3) of the EAPD Regulation makes the transportation support allowance (in cash or in kind) available to a family unit that is not otherwise eligible for support and shelter benefits in a given month because of excess income. For example, someone with the PWD designation who is no longer eligible for monthly support and shelter benefits because they have exceeded their annualized earnings exemption would continue to receive the TSA.

Ministry policy on the “transitional transportation support” provides that people who leave disability assistance for reasons other than excess employment income can retain the transportation support allowance in the following circumstances:

Reason for leaving disability assistance	Period of Transitional Transportation Support (“TTS”)
<p>A family unit in receipt of disability assistance that ceases to be eligible for disability assistance and transitions to MSO because a person in the family unit is age 65 or older and must be in receipt of a qualifying federal benefit</p>	<p>Recipients who leave disability assistance for these reasons may receive TTS as cash until the end of that calendar year. For example, if a recipient transitions to MSO in June 2017, they may receive TTS from June 2017 until December 2017.</p> <p>Recipients who choose a bus pass may keep their bus pass until the end of the calendar year, although the authority for the bus pass switches from TSA to the low-income seniors bus pass program (see BC Bus Pass Program). There is no fee for this bus pass in the calendar year in which the recipient turns 65.</p> <p>In the next calendar year, the senior will be eligible for the seniors bus pass for an annual fee of \$45.</p>
<p>A family unit in receipt of disability assistance that ceases to be eligible for disability assistance and transitions to MSO as a result of a pension or</p>	<p>Recipients who leave disability assistance for this reason may receive TTS until the end of that calendar year.</p>

other payment under the Canada Pension Plan (CPP).	
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**c. Changes to yearly bus pass program for PWDs**

As of September 1, 2016, a person with the PWD designation who receives disability assistance will no longer be able to purchase a yearly bus pass from MSDSI for an annual administrative fee of \$45.

Instead, a person with the PWD designation is eligible for the new \$52 per month transportation support allowance. After September 1, 2016, a recipient of the TSA can decide if they want to receive the TSA:

- a) as \$52 cash each month, added to their disability assistance cheque; or
- b) as a monthly bus pass from MSDSI. If they elect an in-kind bus pass, no administrative fee is payable (the government had earlier announced a \$45 administrative fee would be payable, but changed its mind in June 2016).

This election can be made monthly. That is, a person can switch back and forth between an in-kind bus pass, and the extra \$52/month payment, by giving notice to MSDSI (See EAPD Regulation, section 24.1(2)). Notice must be given by the 5<sup>th</sup> of a month, for a change to take effect on the first day of the following month (e.g. notify by November 5<sup>th</sup> for a change effective December 1<sup>st</sup>).

People who want to have a bus pass from MSDSI on an ongoing basis can keep it indefinitely, and no longer need to reapply for a bus pass each year.

People who qualify for the yearly bus pass for reasons other than having the PWD designation are not affected by these changes, and can still buy a yearly bus pass for an annual administrative fee of \$45. See EAPD Regulation section 51 and EA Regulation section 66 for a description of who falls in these categories.

**8. Exemption of EI maternity and parental benefits, and EI benefits for parents caring for critically ill children as unearned income**

Effective October 1, 2016, EI maternity and parental benefits, and EI benefits for parents caring for critically ill children, are exempted as unearned income for recipients of disability assistance, and income assistance.

See the EA and EAPD Regulations, Schedule B, section 7(1)(g).



Persons With Disabilities Designation Application - Prescribed Class

The personal information requested on this form is collected by the Ministry of Social Development and Social Innovation pursuant to sections 26(c) of the Freedom of Information and Protection of Privacy Act...

Personal Information

Form with fields: Last Name, First Name, Middle Name(s), Birth Date (YYYY MMM DD), Personal Health Number, Case Number (for office use only)

The purpose of this form is to collect the information necessary to determine eligibility for the Person with Disabilities designation as a member of a prescribed class of persons under the Employment and Assistance for Persons with Disabilities Act.

Declaration and Notification

I, \_\_\_\_\_, am applying for designation as a Person with Disabilities under the Employment and Assistance for Persons with Disabilities Act and I declare that the information provided on this form is true and complete.

To apply for this designation, one of the following statements must be true. Check the box beside the one that applies to you:

- Checkboxes for: I am enrolled in BC Palliative Care Benefits - PharmaCare Plan P... I have been determined to be disabled for the purposes of the Canada Pension Plan (CPP)... I have been determined eligible (now or in the past) to receive community living supports from Community Living British Columbia... I have been determined eligible (now or in the past) to receive benefits as a child under the Ministry of Children and Family Development's At Home Program.

Authorization and Consent

Consent text: I consent to the Ministry of Social Development and Social Innovation disclosing a copy of this document... I consent to any agency I have identified above disclosing to the Ministry of Social Development and Social Innovation all personal information about me... I authorize the Ministry of Social Development and Social Innovation to indirectly collect from any agency I have identified above all personal information about me...

Applicant Signature\* and Date Signed fields





# Persons With Disabilities Designation Application - Prescribed Class

\* If the Applicant does not have the necessary capacity to sign this Application, it may be signed by a person who has legal authority to act on behalf of the Applicant under section 3 or 4 of the Freedom of Information and Protection of Privacy Regulation. A guardian may act for a child if the authority to make the application described in this document and provide the consents and authorization set out above are within the scope of the guardian's duties or powers. A committee appointed under the *Patients Property Act*, a person acting under a power of attorney, a litigation guardian or a representative acting under a representation agreement, as defined in the *Representation Agreement Act* may act for an adult if the authority to make the application described in this document and provide the consents and authorization set out above are within the scope of that person's duties or powers.

If you are signing this document on behalf of the Applicant, you must state your legal authority to act on behalf of the Applicant and you must attach proof of that legal authority to this Application.

My legal authority to act for the applicant is \_\_\_\_\_

**Note:** Proof of Committee, Power of Attorney, Litigation Guardian, Representation Agreement Representative or Guardian status must accompany this Application

### Eligibility Verification (for office use only)

I confirm the person noted above is receiving or has been determined eligible to receive benefits or supports from or under the program or agency indicated below, (please check applicable box):

- BC Palliative Care Benefits (PharmaCare Plan P), Ministry of Health
- Canada Pension Plan – Disability Benefits Program, Employment and Social Development Canada
- Community Living BC (Developmentally Disabled or Personal Supports Initiative)\*\*
- At Home Program, Ministry of Children and Family Development\*\* (check benefit type below):
  - Medical Benefits
  - Respite Benefits Only

\*\*If the person noted above has received or was determined eligible to receive benefits or supports under the At Home Program or from Community Living BC, but is not currently receiving those benefits or supports, please also check the applicable box above.

- Applicant **not** eligible for the program indicated above

Program Authority Signature

Date Signed

Print Name

Office/Department/Branch Name