

## **Welfare Law Update: October 1, 2018 to October 1, 2019**

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There have been a number of changes to welfare law since the last Provincial Advocacy Training Conference in early October 2018.

### **SUMMARY**

1. Exemption, as both income and an asset, of money paid by the federal government in settlements reached with the Songhees Nation and the Esquimalt Nation, effective October 1, 2018.
2. Increase in the monthly cap on the amount of crisis supplements for food, and elimination of the overall limit on the amount of crisis supplements a family unit can receive in a year, effective December 1, 2018.
3. Introduction of a new policy which recognizes that someone who has received an overpayment due to Ministry error may have an estoppel defence to collection of the overpayment, effective February 1, 2019.
4. Exemption, as both income and an asset, of money received from the federal Memorial Program for First Responders, as of February 11, 2019.
5. Support rates for income assistance, PPMB benefits, disability and hardship assistance increased by \$50 per month for each adult in a family unit, as of April 1, 2019.
6. Registered dieticians added as health professionals who can confirm someone's need for diet supplements, short term nutritional supplements, infant formula supplement, and the monthly nutritional supplement, as of July 1, 2019.
7. Repeal of the definition of "transient" and of prior limitations on eligibility for benefits and supplements of clients the Ministry deemed "transient," effective July 1, 2019.
8. New criteria that must be met to qualify for designation as a Person with Persistent Multiple Barriers to employment ("PPMB"), effective July 1, 2019.
9. 5 week work search for first time welfare applicants eliminated, and reduced to a 3 week work search, effective July 1, 2019.
10. Asset exemption for vehicles increased: elimination of the cap on the amount of equity exempted in a first vehicle for income assistance or PPMB benefits, as of July 1, 2019.
11. General asset exemption levels increased for income assistance and PPMB benefits, as of July 1, 2019.
12. Moving costs available in a wider range of circumstances, and may also include storage costs, as of July 1, 2019.

13. Identification supplement made available to all recipients of welfare benefits, where required to help someone in a family unit access services in BC, or for another similar purpose, effective July 1, 2019.
14. Room and board rate increased for people who receive room and board from a parent or adult child, as of July 1, 2019.

## **DETAILS**

### **1. Exemption, as both income and an asset, of money paid by the federal government in settlements reached with the Songhees Nation and the Esquimalt Nation, effective October 1, 2018.**

As of October 1, 2018, money that is paid by the federal government under the following two settlement agreements is exempt as both income and an asset for all forms of welfare benefits (including hardship assistance):

- a) Cadboro Bay Litigation Settlement Agreement between the Esquimalt Nation and Canada; and
- b) Settlement agreement dated October 30, 2017 between the Songhees Nation and Canada.

*See: Employment and Assistance Regulation, section 11(1)(ddd)(i) and (ii); Schedule B, section 1(a)(iv)(A) and (B); and Schedule D, section 6(ccc)(i) and (ii). See also Employment and Assistance for Persons with Disabilities Regulation, section 10(1)(ddd)(i) and (ii); Schedule B, section 1(a)(iv)(A) and (B); and Schedule D, section 6(ggg)(i) and (ii)*

### **2. Increase in the monthly cap on the amount of crisis supplements for food, and elimination of the overall limit on the amount of crisis supplements a family unit can receive in a year, effective December 1, 2018.**

With this change, the maximum monthly amount of a crisis supplement for food increased (from \$20) to \$40 for each person in a family unit.

In addition, there is no longer any limit on the total amount of crisis supplements a family unit can get in a year. (Prior to this change, a family unit could not receive crisis supplements totalling more than twice their monthly welfare benefit rate in any 12 month period).

The monthly limit on the amount of a crisis supplement for shelter remains unchanged, as does the yearly limit on the amount of crisis supplements for clothing. The monthly maximum amount of a crisis supplement for shelter can still be exceeded if a crisis supplement is needed for water, hydro, or fuel for heating or cooking.

*See: Employment and Assistance Regulation, section 5(4)(a) and 5(7); See also Employment and Assistance for Persons with Disabilities Regulation, section 57(4)(a) and 57(7).*

**3. Introduction of a new policy which recognizes that someone who has received an overpayment due to Ministry error may have an estoppel defence to collection of the overpayment, effective February 1, 2019.**

This new Ministry policy formally recognizes that where a person has received an overpayment of benefits or supplements due to Ministry error, the person may have an estoppel defence to the overpayment under section 89 of the *Financial Administration Act* RSBC 1996, c-138.

Estoppel can arise where the person received benefits they were not entitled due to error by the Ministry, and the person can show detrimental reliance on the Ministry's decision.

More details are found in the new Ministry policy, a copy of which is **attached**.

The policy is also found in the Ministry's Policy and Procedures Manual, at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/compliance-and-debt-management/recoveries?keyword=estoppel>

**4. Exemption, as both income and an asset, of money received from the federal Memorial Program for First Responders, as of February 11, 2019.**

This exemption relates to family members of police officers, fire fighters and paramedics (including volunteers and auxiliaries) who died in the line of duty on April 1 2018 or after. Certain next-of-kin of first responders who die as a result of their duties are eligible to receive a one-time lump-sum direct payment of \$300,000 from the federal Memorial Grant Program.

All such payments are exempt as both income and assets for all forms of welfare benefits.

*See: Employment and Assistance Regulation, section 11(1)(eee); Schedule B, section 1(a)(lvi); and Schedule D, section 6(ddd). See also Employment and Assistance for Persons with Disabilities Regulation, section 10(1)(eee); Schedule B, section 1(a)(lx); and Schedule D, section 6(hhh)*

**5. Support rates for income assistance, PPMB benefits, disability assistance and hardship assistance increased by \$50 per month for each adult in a family unit, effective April 1, 2019.**

This was the first increase to income assistance and PPMB benefit rates since 2017 (disability assistance support rates were increased by \$52 in 2018). The income assistance rate for a single employable person is now \$760.00 per month.

*See: Employment and Assistance Regulation, Schedule A, section 2(1) and Schedule D, table 1. See also Employment and Assistance for Persons with Disabilities Regulation, Schedule A, section 2(1) and Schedule D, table 1.*

**6. Registered dietitians added as health professionals who can confirm someone's need for diet supplements, short term nutritional supplements, infant formula supplement, and the monthly nutritional supplement, as of July 1, 2019.**

Prior to this change, eligibility for most diet and nutrition related supplements could only be confirmed by medical practitioners or nurse practitioners. In order to be considered a "registered dietitian," a dietitian must be a "registrant of the College of Dietitians of BC established under the *Health Professions Act*."

See: *Employment and Assistance Regulation*, sections 1(1), 73(2)(b), 74(b), 74.01(3)(a), Schedule C sections 8(2) and 10(a). See also *Employment and Assistance for Persons with Disabilities Regulation*, sections 1(1), 66(2)(b), 67(1.1), 67(2), 67.001(b), 67.01(3)(a), Schedule C section 6(2) and 9(a).

**7. Repeal of the definition of "transient" and of prior limitations on eligibility for benefits and supplements of clients the Ministry deemed "transient," effective July 1, 2019.**

Prior to this change, the welfare legislation provided that people with no fixed address and no dependent children who applied for income assistance in a community in which it did not appear the person would take up permanent residence, were "transients." There were various limitations on the benefits and supplements that transient clients were eligible for: for example, they were not eligible for shelter costs, but only for the cost of a hostel and food; were not eligible for moving cost supplements or health supplements; and were not entitled to earnings exemptions.

As of the July 1, 2019, the welfare legislation no longer defines "transients" and all prior limitations on eligibility for benefits and supplements have been removed.

**8. New criteria that must be met to qualify for designation as a Person with Persistent Multiple Barriers to employment ("PPMB"), effective July 1, 2019.**

With this change, addictions can now be considered as part of the health condition that may qualify someone for the PPMB designation. In addition, a person no longer needs to be on some form of welfare benefits for at least 12 out of the past 15 months before being eligible to apply for the PPMB designation.

The new criteria for PPMB designation are that a person must:

- Be receiving income assistance or hardship assistance;
- Have a health condition that a health professional has confirmed:
  - has continued for at least one year and is likely to continue for at least 2 more years, or
  - has occurred frequently in the past year and is likely to continue for at least 2 more years;

- Have the ministry agree that their health condition is a barrier that seriously impedes the person's ability to search for, accept or continue in employment, **and**
- Face a circumstance that the ministry agrees is a circumstance that seriously impedes the particular individual's ability to search for, accept, or continue in employment. Such circumstances may include, **but are not limited to:**
  - (i) being homeless or having been homeless in the past 12 months;
  - (ii) experiencing domestic violence now or in the past 6 months;
  - (iii) needing English language skills training;
  - (iv) not having basic skills for employment;
  - (v) having a criminal record;
  - (vi) having an education below grade 12;
  - (vii) having accessed emergency health, mental health or addiction services multiple times in the past 12 months;
  - (viii) being a Convention refugee or having been found to be a Convention refugee in the past 24 months, or being in the process of having a claim for refugee protection, or application for protection, decided under Canadian immigration law; or
  - (ix) being a person who was a "child in care" under the *Child, Family and Community Services Act*, RSBC 1996, c-46 or received similar care under an enactment of another Canadian jurisdiction.

The PPMB designation application can now be completed by any one of the following health professionals:

- |                                |                                  |                           |
|--------------------------------|----------------------------------|---------------------------|
| • medical practitioner         | • chiropractor                   | • physical therapist      |
| • nurse practitioner           | • occupational therapist         | • school psychologist     |
| • registered nurse             | • registered social worker       |                           |
| • registered psychiatric nurse | • registered clinical counsellor | • registered psychologist |

See: *Employment and Assistance Regulation*, section 2

**9. 5 week work search for first time welfare applicants eliminated, and reduced to a 3 week work search, effective July 1, 2019.**

Prior to this change, people who were applying for welfare for the first time had to do a 5 week work search before being scheduled for an eligibility interview with MSDPR. As of July 1, 2019, the 5 week work search has been eliminated.

Now, any welfare applicant who is required by the Ministry to do a work search must look for work for three weeks before their eligibility interview with the Ministry. The categories of people who are exempted from doing a work search have not changed.

See: *Employment and Assistance Regulation*, section 4.1(2)(b)(i)

**10. Asset exemption for vehicles increased: elimination of the cap on the amount of equity exempted in a first vehicle for income assistance or PPMB benefits, as of July 1, 2019.**

“One motor vehicle generally used for day to day transportation needs” is now an exempt asset for an applicant for or recipient of income assistance or PPMB benefits, without any limit on the amount of equity in that vehicle.

Prior to this change, equity in a motor vehicle was exempt up to a maximum of \$10 000 only, or more if the vehicle was used to transport a disabled child, or had been significantly adapted to accommodate the needs of another disabled member of the family unit.

See: *Employment and Assistance Regulation*, section 11(1)(b).

**11. General asset exemption levels increased for income assistance and PPMB benefits, as of July 1, 2019.**

The general asset exemption level for a single person applying for or receiving income assistance or PPMB benefits is now \$5000 (up from \$2000). For family units of two or more applying for or receiving income assistance or PPMB benefits, it is now \$10 000 (up from \$4000).

See: *Employment and Assistance Regulation*, section (2)(a) and (b)

**12. Moving costs available in a wider range of circumstances, and may also include storage costs, as of July 1, 2019.**

Some of the geographic restrictions on the availability of moving costs have been removed, and moving costs can now also include payment of storage costs for a family unit’s personal belongings during a move, if the ministry believes storage is needed to preserve their belongings.

Moving costs are now available for a move anywhere in BC if a family unit is compelled to leave their rented place for any reason, including the sale, demolition or condemnation of their home, or if the move would significantly reduce their shelter costs, or moving is necessary to avoid an imminent physical threat to someone in the family unit. While pre-approval for moving costs is usually required, the Ministry can approve a moving costs supplement without pre-approval, where “exceptional circumstances” exist (e.g. perhaps if a family had to move quickly to avoid an abusive situation or the ministry could not pre-approve expenses in time for a move date).

See: *Employment and Assistance Regulation*, section 57. See also *Employment and Assistance for Persons with Disabilities Regulation*, section 55.

**13. Identification supplement made available to all recipients of welfare benefits, where required to help someone in a family unit access services in BC, or for another similar purpose, effective July 1, 2019.**

Prior to this change, the Ministry could only issue identification supplement to someone receiving hardship benefits who needed specific ID in order to qualify for regular income assistance, PPMB benefits or disability assistance.

Now, an ID supplement is available to all recipients of welfare benefits where someone in a family unit needs ID access important services in BC such as a bank account or BC Services card, or for other similar purposes like applying for jobs or school, or to participate in community activities.

*See: Employment and Assistance Regulation, section 63.1. See also Employment and Assistance for Persons with Disabilities Regulation, section 60.11*

**14. Room and board rate increased for people who receive room and board from a parent or adult child, as of July 1, 2019.**

This changes makes people who receive room and board from a parent or adult child, entitled to the same rates as people in any other room and board situation (previously, people in the first situation were only eligible for support benefits (not shelter benefits).

Currently, all welfare recipients paying for room and board are eligible for up to the maximum shelter and support benefit. If the actual cost of room and board is less than the family unit's maximum shelter and support benefit, each adult in the family unit is eligible for up to \$60 on top of the room and board cost, and each dependent child in the family unit is eligible for up to \$40 on top of the room and board cost.

*See: Employment and Assistance Regulation, Schedule A, section 6. See also Employment and Assistance for Persons with Disabilities Regulation, Schedule A, section 6.*

## **Estoppel Defence to Overpayments created due to Ministry Error**

### **MSDPR Policy, effective February 1, 2019**

This policy is found in the “Recoveries” section of the Ministry’s Policy and Procedure Manual, at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/compliance-and-debt-management/recoveries> in the policy section named “*Reasons not to Recover an Overpayment.*”

The policy states:

#### **“Overpayments that may meet an estoppel defence**

Section 87 of the Financial Administration Act provides for the availability of an estoppel defence when the ministry seeks to recover the assistance from a recipient that they were not eligible to receive. An estoppel defence protects a recipient, who through no fault of their own receives a payment they were not eligible to receive.

When establishing a ministry error overpayment, staff must review the following criteria to see if the overpayment meets all of the criteria of an estoppel defence, as described below. Overpayments that meet the following criteria **must** be referred to a supervisor.

There may be an estoppel defence when all of the criteria listed below are met:

1. A recipient received assistance that he or she was not eligible to receive, and,
2. The ministry represented to the recipient that he or she was eligible for the assistance.
  - This could be an explicit statement by the ministry that the person was eligible, or,
  - An implicit statement by the continued payment of assistance by the ministry despite having all the information needed to determine the recipient was actually ineligible (e.g. the client had provided sufficient evidence to determine their eligibility); and,
3. The recipient had relied on the funds to his or her detriment (detrimental reliance).
  - This detrimental reliance is when a client with non-discretionary income adjusts their living expenses to the increased amount of assistance.
  - It is generally accepted that a person in receipt of assistance will adjust their living expenses to an increased amount of assistance and therefore in almost all cases there will be detrimental reliance on the increased assistance.
  - An estoppel defence recognizes that, where there has been detrimental reliance, requiring an innocent recipient to return a mistaken payment (e.g. overpayment) of assistance would be inequitable.



Estoppel defence cases are highly dependent on the facts of the situation. The availability and strength of an estoppel defence will vary depending on the circumstances of the ministry's representation concerning eligibility and the reasonableness of the recipient's reliance on the information provided.

Examples of circumstances where the file should be referred for further review include the following:

- A recipient has been told by ministry that while receiving MSO, the recipient will continue to be eligible for the monthly nutritional supplement, which is not an eligible supplement for recipients of MSO.
- A recipient fails to report disability insurance payments as income, based on mistaken instructions from the ministry that such amounts are exempt income.

In each of these examples, the ultimate opinion as to whether the recipient is likely to have a successful estoppel defence will be determined by Debt Management in the Financial Services Branch."