

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated February 29, 2012 which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeds the amount of income or disability assistance payable.

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), Sections 1, 10, 28, and Schedules A and B

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Application to Obtain an Order in B.C. Provincial Court filed by the appellant dated October 30, 2003 for a number of orders;
- 2) Writ of Summons- Family Law Proceeding in the B.C. Supreme Court dated August 19, 2004 filed by the Appellant for a number of orders;
- 3) Notice of Motion and Reply in B.C. Provincial Court filed by the appellant dated February 17, 2005 for a number of orders;
- 4) Statement of Claim- Family Law Proceeding in the B.C. Supreme Court dated March 11, 2005 filed by the appellant for a number of orders;
- 5) Letter from the Tribunal to the appellant dated October 18, 2006 enclosing a copy of the decision and two pages of the decision;
- 6) Assignment of Maintenance Rights by the appellant dated November 7, 2006;
- 7) Application to Obtain an Order in B.C. Provincial Court for maintenance for child support dated April 24, 2008;
- 8) Notice of Attachment under the Family Maintenance Enforcement Act dated June 15, 2011 in the appellant's name for maintenance arrears of \$360.76 as of June 15, 2011 and ongoing maintenance of \$180.00 due on the first day of the month;
- 9) Letter dated June 17, 2011 from the Department of Justice Canada to the appellant stating in part that the government was served with a garnishee summons by FMEP and moneys payable to the appellant may be diverted to pay the judgment creditor;
- 10) Letter dated June 29, 2011 from Service Canada to the appellant stating in part that she is receiving a disability benefit in the amount of \$1,102.86 with no listed deductions for a net monthly total of \$1,102.86;
- 11) Unsigned Applications for Income Assistance in the appellant's name dated July 26, 2011 in which she declares monthly family income of \$864.00 ("net") from CPP;
- 12) Copy of cheque dated August 31, 2011 from the appellant to the Receiver General for Canada for \$80.00;
- 13) Copy of cheque dated September 1, 2011 from the appellant to FMEP payment services for \$225.00;
- 14) Note from physician dated September 19, 2011 for a semi-rigid wrist splint for carpal tunnel syndrome, along with added handwritten notes;
- 15) Print out of SSA assessment information dated December 14, 2011 to the appellant;
- 16) Print out of accounts with a credit union dated December 29, 2011 indicating a free chequing debit account with a balance of \$111.60 and membership shares in the amount of \$5.00;
- 17) Account Statement for a free chequing debit account dated December 29, 2011 indicating in part an opening balance as of October 15, 2011 of -\$3.81 and a closing balance as of December 23, 2011 of \$111.60;
- 18) Letter dated January 5, 2012 from the ministry to the appellant stating in part that the ministry determined that she is not eligible for income assistance as her Canada Pension Plan (CPP) disability income is above both income assistance and Persons With Disabilities (PWD) rates; a completed Request for Reconsideration must be submitted within 20 business days from the day notified of this decision, if dissatisfied with the decision;
- 19) Application for Income Assistance (Part 1) in the appellant's name dated January 12, 2012;
- 20) Undated Request for Access to Personal Information form by the appellant for all copies of July 11, 2011 application; 20-30 pages brought in and faxed in July - September 2011, denied October 5, 2011 and second application December 2012 (sic) application form, December 18, 2012 (sic) as well; and,
- 21) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided additional documents as follows:

- 1) Letter dated March 7, 2012 to the appellant from the ministry that states in part that the ministry received her request for access to personal information on January 27, 2012 and since that time the appellant has confirmed that the ministry has provided the requested records to her directly with the exception of some information she submitted on-line to the ministry on 3 occasions which is not retained in record form

therefore the request has been closed;

- 2) Letter dated March 13, 2012 to the appellant from the ministry enclosing a copy of the March 7, 2012 letter mailed to her previous address;
- 3) Letter dated March 30, 2012 from the appellant to the B.C. Human Rights Tribunal requesting a meeting;

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The ministry did not raise an objection to the admissibility of these documents. The panel reviewed the documents and did not admit the letters as they related to procedural matters and not being in support of information or records before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In her Notice of Appeal, the appellant states that there were crisis circumstances from 2006 through 2012, protect family, maintenance: orders for child and spouse support, ignored, harassed, left worse off, legal abuse in her opinion, constant delays, runaround by workers, no respect or accountability, no council to assist with understanding all issues, information not given or not timely.

In her Request for Reconsideration by way of letter dated February 24, 2102, the appellant states that she first called the ministry in 2006 due to family violence and abuse and financial hardship, fleeing her ex-spouse in 2003. The appellant describes her dealings with the ministry with respect to her Assignment of Maintenance Rights and her financial situation. The appellant states that she did not receive maintenance help and then was in a bad car accident in July 2007. The appellant states that she contacted the Ombudsperson in 2008 and that she found that she was still not informed of the court proceedings and that errors were made. The appellant states that she was given CPP benefit without all the paperwork, her cheque for retro from her arm surgery went to pay a large debt that she had already refinanced with her bank for a line of credit. The appellant states that she was not satisfied with the amount obtained for maintenance since she had worked for years in the business and her ex-spouse was hiding salary, management fees, and one company grossing \$2 million but he does not help with eye glasses or medicine or counseling or support to his wife and child. The appellant states that she believes her family has been subjected to wrongful misdoings by the ministry.

The appellant further states in her Request for Reconsideration letter that she contacted the ministry on July 11, 2011 and 3 weeks later they requested an onslaught of information. The appellant states that she personally gave the papers to the ministry in August then later faxed one in September "...especially waiting on a medical letter, garnishee, debt, utilities, house, various." The appellant states that she requested help with splints for both arms and was denied and she asked for help with a hot water tank and was denied. The appellant states that on December 14, 2011 she applied online and was later contacted by the ministry. The appellant states that the ministry asked for numerous articles, including updated bank accounts, debt, house utilities, insurance, etc, even though a lot was the same from July and she dropped these off personally on December 29, 2011. The appellant states that on Sunday, December 18, 2011 she refilled another application online after speaking with the ministry and informing them of the neglect, maltreatment of the lawyer they gave to work with. The appellant states that on January 5, 2012, she spoke with the ministry who told her that she was denied by her income which she was not informed of in December but asked to submit further information. The appellant states that she has debt to pay due to the negligence of the ministry with mishandling her file from 2006 through 2009 and she has experienced financial hardship since 2006. The appellant states that she asked than an exception be made due to having CPP since she has long-term debt due to the mishandling of her file from 2006. The appellant states that she has a garnishee to pay and the large debt due to no support orders for child and spousal for over 3 years. The appellant states that the debt is due to the neglect and not her poor budgeting or spending habits.

The evidence of the ministry is that the appellant's file opened on July 26, 2011 as a single applicant. The appellant declared that she is in receipt of \$884 monthly through Canada Pension Plan (CPP) disability and

the ministry informed the appellant of the outstanding documents she was required to submit in order for the ministry to determine her eligibility for income assistance. On October 6, 2011 all outstanding documents were submitted to the ministry and it was noted that the appellant is in receipt of \$1,102 in monthly CPP benefits. The ministry contacted the appellant to advise her that she was not eligible for assistance as she is in receipt of income above the rates for both income and disability assistance. The appellant stated that at least \$200 of her monthly CPP benefit was being garnished and the ministry advised that this income is not considered exempt. The appellant was offered the right to a reconsideration for that decision but the appellant did not specify that she wished to exercise the right at the time. The appellant's file was closed on October 21, 2011 as abandoned. On December 21, 2011, the appellant's file was electronically opened as a single applicant with a request to apply as a person with disabilities (PWD) status. The appellant receives CPP benefits of \$1,102 monthly and the appellant states that she is being garnished \$180 per month due to family maintenance arrears. The appellant has \$1,000 in a tax-free savings account. On January 5, 2012 the ministry advised the appellant that she is not eligible for assistance as income assistance rates for a single applicant are \$610 per month (support of \$235 plus shelter allowance of \$375 per month) and disability assistance rates for a single applicant are \$906.42 (support of \$531.42 plus shelter allowance of \$375 per month). At the hearing, the ministry clarified that in order to apply for PWD designation to receive disability assistance, the appellant must first be eligible for income assistance or have income and assets under the disability rates.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision, which found that the appellant is not eligible for income assistance under Section 10 of the Employment and Assistance Regulation (EAR) as the net monthly income of the family unit exceeds the amount of income or disability assistance payable, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the Employment and Assistance Regulation (EAR) provides that:

- 10 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Section 28 of the EAR provides that:

Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A of the EAR sets out the total amount of income assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. As a sole applicant with no dependent children, the amount that would be payable to the appellant is \$235.00 in support and \$375 in maximum monthly shelter allowance.

Section 1 of the EAR defines "unearned income" to mean "...any income that is not earned income, and includes, without limitation, money or value received from any of the following:

...

- (f) any type or class of Canada Pension Plan benefits; ..."

In calculating the net income of a family unit under Schedule B, specific exemptions and deductions from unearned income are provided for as follows:

### **Deduction and exemption rules**

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [BC

*harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);

- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
  - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
  - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (xxi) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;
- (xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child to a person other than a parent of that child;
- (xxv) a loan that is

- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
- (B) received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (A) Autism Funding: Under Age 6 Program, or
- (B) Autism Funding: Ages 6 — 18 Program;
- (xxvii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;
- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxvii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,
- (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 [deductions from earned income] and 6 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

#### **Deductions from unearned income**

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

**Exemptions — unearned income**

7 The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if
  - (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (1) of this regulation, and
  - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ , where
  - A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;
  - B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or
  - (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
  - C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.

The ministry's position is that the appellant is a single applicant with no dependent children and is therefore eligible for a support allowance in the amount of \$235 per month and a shelter allowance in the amount of \$375 per month, for a total allowance of \$610 per month under Schedule A of the EAR. The ministry argues that the appellant has not been approved as a PWD and, therefore, the income assistance legislation and rate are used. The ministry points out that if the appellant had been granted PWD status, the monthly rate of disability assistance would be \$531.42 in support allowance and \$375 for shelter, for a maximum total allowance of \$906.42 per month. The ministry argues that the appellant is in receipt of CPP benefits, which are included in the definition of "unearned income" in Section 1 of the EAR, in the total amount of \$1,102.86 for December 2011 and that there are no applicable exemptions available in Schedule B to reduce this amount of income, including any type of garnishment from any source. As the monthly net income of the appellant's family unit (\$1,102.86) exceeds the income assistance rate (\$610) and the disability assistance rate (\$906.42), the appellant is not eligible for assistance under Section 28 of the EAR.

The appellant does not dispute that she is in receipt of CPP disability benefits in the total amount of \$1,102.86 per month. However, the appellant argues that she has a garnishee to pay and a large debt due to no support orders for child and spousal for over 3 years. The appellant argues that the debt is due to the negligence of the ministry with mishandling her file from 2006 through 2009 and not her poor budgeting or spending habits. The appellant argues that an exception should be made in her circumstances although she receives CPP benefits since she has long-term debt due to the mishandling of her file since 2006.



The panel finds that it is not disputed that the appellant's total monthly income is currently \$1,102.86 consisting of CPP disability benefits. Money or value received from any type or class of Canada Pension Plan benefits is specifically included in the definition of "unearned income" under Section 1(1) of the EAR. Although the appellant argues that she has a garnishee to pay which reduces her income, Section 10 (1) of the EAR specifies that "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant. The appellant also argues that an exception should be made in her circumstances since she has long-term debt due to the ministry's mishandling of her file, and the panel finds that the ministry is limited to applying the deductions and exemptions available in the legislation. Section 1(b) of Schedule B of the EAR stipulates that any amount garnished, attached, deducted or set off from income is considered to be income except the deductions from unearned income permitted under Section 6 of Schedule B, which relate specifically to income tax deducted from source from employment insurance benefits and essential operating costs of renting self-contained suites. The panel finds that the ministry has reasonably determined that there is no income exemption or deduction available, in Schedule B of the EAR, for an amount garnished to reduce the amount of income applied against total eligible allowances. The panel finds that the maximum income assistance payable for the appellant's family unit is \$610.00 per month under Schedule A of the EAR, and the maximum disability assistance is \$906.42. The panel finds that the ministry reasonably concluded that the net income of the family unit (\$1,102.86) exceeds the amount of income assistance determined under Schedule A of the EAR for a family unit matching the appellant's family unit (\$610) and, therefore, no income assistance is payable pursuant to Sections 28 and 10(2) of the EAR.

The Panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision.