

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry) reconsideration decision dated June 18, 2012 which held that pursuant to section 10 of the Employment and Assistance Regulation (EAR) the Appellant is ineligible for income assistance for the month of June 2012 because she received earned income of \$680 in the month of April 2012 that was not reported by May 5, 2012 as required under section 33 of the EAR where it states that earned income must be deducted from income assistance as set out in section 28 and in Schedules A and B of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Sections 1, 10, 28; 33(1), Schedule A, Sections 1, 2(1); 3, 4(2), Schedule B, Sections 1, 2 and 3

PART E – Summary of Facts

The Ministry failed to appear at the hearing at the scheduled time and date. After verifying that the Ministry had been notified of hearing, the hearing proceeded under section 86(b) of the EAR.

Information before the Ministry at Reconsideration included:

- The Appellant is a single person receiving income assistance from November 2011.
- The Appellant reported income earned in March 2012 in the amount of \$1,060.00 supported by an invoice dated March 31, 2012.
- The Appellant reported income earned in April 2012 in the amount of \$680.00 supported by an invoice dated April 28, 2012.
- A copy of a notice from the Appellant's landlord dated June 11, 2012 stating that the Appellant is 11 days overdue on rent and damage deposit.
- An authorization and waiver of confidentiality from the Advocacy Centre dated June 11, 2012.
- The Appellant's Request for Reconsideration, dated June 11, 2012 in part the Appellant writes: "I am on income assistance. I expected to get a cheque for June because I was not working in May. In April, I worked and earned \$680 which I used to live on during the month of May."
- The Appellant further states that she pays \$500.00 per month for rent and damage deposit.

In the Notice of Appeal dated June 28, 2012 the Appellant writes:

"... I did not know the money I made in April would affect my June cheque. I used the money I made in April in April and May. Considering how much money we are talking about, it is impossible to budget that far in advance."

At hearing, the Appellant states that she reported her March and April 2012 income when she was making application for her June 2012 benefit.

In the Appeal Record Package, the Ministry states that the Appellant is a single person receiving income assistance since November 2011. The Ministry further states that, under Section 33 of the EAR, a person is required to report income by the 5th day of the month following the month income is received. The Appellant did not declare the \$680.00 income she received in April by May 5th and therefore the \$680.00 was deducted from June income assistance. The Appellant is eligible for income assistance up to \$610.00 per month; however, after the April income of \$680.00 is deducted, the Appellant is not eligible for June income assistance.

The Panel made the following finding of fact:

- The Appellant's earned income for the month of April 2012 is \$680.00 and this amount was not reported to the Ministry by May 5, 2012.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry reasonably determined that pursuant to section 10 of the EAR the Appellant was not eligible for income assistance for the month of June 2012 because her net income for April 2012, which was reported after May 5, 2012, exceeded the amount of income assistance for her family unit determined under Schedule A of the Regulation.

Applicable Legislation

EAR

Definitions

1 (1) In this regulation:

"assistance" means income assistance, hardship assistance or a supplement;

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

Limits on income

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.

Amount of income assistance

28 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.

Monthly reporting requirement

33 (1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of each calendar month, and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:

(i) whether the family unit requires further assistance;

(ii) changes in the family unit's assets;

(iii) all income received by the family unit and the source of that income;

(iv) the employment and educational circumstances of recipients in the family unit;

(v) changes in family unit membership or the marital status of a recipient.

Schedule A**Maximum amount of income assistance before deduction of net income**

1 Subject to sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Prorating of support allowance

3 In the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission. (B.C. Reg. 304/2005)

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of (B.C. Reg. 73/2010)

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Schedule B**Net Income Calculation****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;
- (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiii) 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;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxviii) 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,
- (xxxix) 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 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 earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Exemption — earned income

3 (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

- (a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed
 - (i) income assistance under the Act,
 - (ii) disability assistance under the *Employment and Assistance for Persons with Disabilities Act*,
 - (iii) income assistance or a youth allowance under a former Act,
 - (iv) a disability allowance under the *Disability Benefits Program Act*, or
 - (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv),
- (b) each person in the family unit is under 65 years of age, and
- (c) either
 - (i) any person in the family unit is a person who has persistent multiple barriers to employment, or
 - (ii) the family unit is composed of a sole recipient who

- (A) has a dependent child, or
- (B) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (p).]
- (C) has in his or her care a foster child,

and the child has a physical or mental condition that, in the minister's opinion, precludes the sole recipient from leaving home for the purposes of employment or working, on average, more than 30 hours each week.

- (2) The exempt amount for a family unit that qualifies under subsection (1) is calculated as the lesser of the family unit's total earned income in the calendar month of calculation, and
- (a) \$300 in the case of a family unit that is composed of a sole recipient described in subsection (1) (c) (ii), or
 - (b) \$500 in the case of a family unit described in subsection (1) (c) (i).

The Ministry's position is that income from employment must be deducted from the Appellant's income assistance benefit. The income received by the Appellant in April 2012 was not reported to the Ministry by May 5, 2012 and therefore, once reported to the Ministry, must then be deducted from the June 2012 income assistance benefit. The Ministry further states that there is no legislated authority to disregard Section 28 and Section 33 of the EAR because the Appellant did not understand it.

The Appellant's position is that she used the \$680.00 April 2012 earned income to live on in May 2012. The Appellant further states that she did not know that the money she earned in April would affect her June 2012 income assistance.

The Panel notes that the Appellant feels she was given misleading or incomplete information by Ministry staff. However, the panel finds that the Minister does not have the discretion to provide income assistance except as stipulated under sections 28 and 33 of the EAR. When net income exceeds the amount of income assistance calculated under Schedule A of the EAR it is clear that those earnings must be declared and subsequently deducted from the next cheque issue, in this case, June 2012 income assistance.

The Panel finds that the Ministry's application of the applicable legislation was reasonable in deducting the Appellant's earned income for April 2012 from the calculation of her June 2012 income assistance. The Panel confirms the Ministry's decision.